USURY
Explain'd;
OR,
Conscience Quieted in the Case
OF
Putting out Mony
AT
INTEREST.

By *PHILOPENES.*

LONDON: Printed by *D. E.* in *Fetter-Lane.* 169⅚.

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Joseph Tasker.

Middleton Hall, Essex.

London.

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ERRATA'S.

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THE PRINTER TO THE Courteous Reader

GEntle Reader, in compliance with my Calling, I present thee with a small Treatise, upon the Case of Putting out Mony at Use, The Subject is of a Publick concern, and the Press is ordered to the Publick good. Written Papers, are like Spirits, appear to some, and not to others, and often Prove illusions. The Publick eye is the quickest and the surest in discerning good, from evil.

The

The Printer.

The Author who writ, what I now Print, is no farther Known to me, than by the Name of *Philopenes*, a lover of Poverty, or a friend of the Poor. If he be, what his name implies, The fitter he is, to diſcourſe impartially a Point, in which Reaſon alone can concern him; I hope he will not take it in evil Part, that I ſet forth for ſome ſmall Advantage, what for more than a year, has paſt thro' ſeveral hands; That were to blame his own Judgment, in letting it be ſeen by ſo many, or to give ſuſpicion of ſome dark Deſign: by avoiding the Publick.

If what he writes be True, 'tis one of thoſe Truths, which ought not to be conceal'd, nor hidden under the Buſhel; that were envious. If erroneous, not to ſecure Error by diſcovery, that were uncharitable. If he fears Truth may diſpleaſe ſome,

he

he might as well desire to put out all light, as offensive to weaker sights, unuseful to the Blind, and unacceptable to such, as wilfully shut their Eyes.

The Book is but short, well if it be clear; short, as it is, Divines, Lawyers, and all concern'd in Mony; may find in it somewhat for their Turns. Be it what it will, take it for what it is: The Print is only mine, and may be thine, too, at a small Charge, *Farewell.*

THE

Author

TO THE

READER.

ZEal when Kindled by Divine Love, temper'd with Humility, fed by the Spirit of Meekneſs, and govern'd by Diſcretion cheriſhes Piety and Obſervance. Uſurpation of Rigor, carried on, with exceſſes of Fervor, Not according to Knowledge, Rom. *the* 10*th. diſquiets both. To make a Sin, of no Sin, is as irregular, as to make no Sin, of a Sin. To declare unlawful, what conſiſts with Conſcience, breeds an undervalue of the Declarer, no leſs than if he declare lawful, what Conſcience condemns.*

Con-

Conſcience cenſures nothing, but upon Evidence of Obligation; Prepoſſeſſion of Mans Liberty, is ſo good a title, that it cannot be overthrown, but by a manifeſt Proof, of Gods reſtraining it. To alledge a Command, for his not his, is to impoſe upon God and Man, the worſt of Preſumptions.

Faith requires an Evidence of Credibility, in reference to what we are to believe; and Part of that we are to believe, are the Rules of well and evil Doing. Whence clearly enſues, a certainty muſt be had of thoſe Rules; For where a Rational Debate is admitted upon the whether, an Action be ſinful, or no, ſo as to leave it undecided, Poſſeſſion of Liberty againſt Reſtraint, holds good in Reaſon and Law, where Poſſeſſion carries ſo great a Portion, that no man is oblig'd to relinquiſh it, before evidence brought in againſt him for its forfeiture, and ſentence Pronounced in due form, by

a Competent Judge. Without this whoever disturbs, the quiet Possessor, is guilty of Violating the Peace. This discourse I have in Occasions Promoted against Modern Pretended Reformers, in Point of Religion, in the Present Case, I renew it.

A settled Practice, of Putting out of Mony, has been long in Possession with all Ranks and Qualities, such as take upon them to Reform it, must Produce Evidence, and Sentence given by a Lawful Judge against it; whether any Verdict has yet past to that Purpose, be your self the Arbitor, after a due Perusal, of what I shall impartially set down, in this short Tract.

My Method is to Discourse the Matter in hand, as to the Laws of Nature, Scripture, and Church. I wish my Endeavours may answer my Intentions, or at least, that my Intentions, may justifie my Endeavours, in Case they answer not thy Expectation. Farewel,

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PART. I.

As to the Law of Nature.

CHAP. I.

The Caſe Conſidered as to the Nature of MONY.

lib. 4. c. 1. ARiſtotle defining Liberality, *to be a Vertue moderating the Love of Mony*, and *Prompting to ſpend*, *by the dictates of Reaſon.* Under the Name of Mony, comprehends all things priz'd by Mony, as the ſtanding Meaſure of their Worth. The preſent Diſcourſe admits not of ſo much Latitude, but confines it ſolely, to the being the Meaſure of Valuation, and Price of

Wares; ſo becoming the common Inſtrument of Sales and Purchaſes, the Soul of Traffick, and the Life of Markets.

As to its Origin not over Noble, I find it to have been the Child of Want, tho' ſince become the Parent of Abundance. When all other Creatures bearing different Coins, iſſued out of the Mint, if I may be ſo bold to ſay, of nothing: No Mony appear'd, which perchance may have been a Reaſon, why the Serpent brib'd our firſt Parents to Rebellion, not with Mony, but Ambition, and Pleaſure.

All other Beings had God for their Creator, Mony, as to its Form, was the Creature of Man, and that only after his Fall, being multiplied upon Earth; Diviſions of Property then, enter'd the World, from whence ſprung a Neceſſity of Commerce; *Firſt*, By Bartering one thing for another: In ſucceſs of Time, Trade improving, a Current Meaſure, for the Price of Things, was judg'd requiſit, and therefore ſettled by each Superior, in his Reſpective Dominion, and admitted by Communities. So that, as the firſt intercourſe of Trade, was entertain'd

tain'd by Exchange of one thing, for another, Mony became the Vicar, as it were, of all things, And by conſequence, was deſign'd to be of no leſs Profit. Otherwiſe the Exchange of other Commodities for Mony, would have been unequal, in giving what might Produce Gain, for Mony, which ſhould afford None.

Such was the firſt Inſtitution of Mony, Riſing by Degrees to that ſway that *Rome* it ſelf, with its grave ſtately Senat, would have been unſubdu'd, had a Purchaſer, of ſufficient Wealth, appeared before it. This moves no ſmall wonder in me, that Mony vulgarly ſhould paſs for barren, and unfruitful, ſeeing it renders to its Owner, whatever Nature produces. For tho' of it ſelf, or rather its matter yield nothing; Yet by the Artificial Being it has from Man, it gives Profit at leaſt equal to other Productions of Art, affording Rent, for the uſe of them. Nay brings in much greater encreaſe, to the skilful Mannager. *Salluſt. in Jug.*

The Mountebank in St. *Auſtine*, to raiſe expectation, took upon him to

De Trin. tell the People, what was each ones wish and desire, Curiosity having gathered a Numerous gaping Auditory, he acquits himself of his Promise, saying; *They would all buy cheap, and sell dear.* This assuredly is the constant interest of such as expend, to encrease Mony in its Use. For he that buys cheap, and sells dear, in what he buys, ensures his Principal with Profit; so that to receive advantage for Mony, without sinking the Principal, is but a sequel of its being the Price of Wares. On this account I guess, a Mony'd Man, is said to have a good *Fund*, from the Latin *Fundus* a Farm, or a good *Stock*, in token of its Fruitfulness.

Of what Metal the first Mony was, or whether of any, I were yet to learn, had I hopes of a Master to Teach me. But the quality of the Matter, is indifferent to the character it bears. This gives it its worth, and Men may bestow it upon Leather, Lead or other Materials, in lieu of Gold, and Silver.

Mony methinks, has much of the nature of words, tho' not so frankly parted with. Both are Mans Tenants at Will, both

both order'd to Interchange and Communication, Words of thoughts, and Mony of things, neither to be falſified, but to be directed to the end, for which they were Fram'd, general Conveniency, and improvement. By a more or leſs Tendency, to this end, the good, or bad uſe, of either is determin'd. Now to decide whether the putting out of Mony at a modeſt Rate, drive at that end, or no, who can judge better, than the whole of a Nation.

But Uſury intervenes. Let him who advances ſo bold a Cenſure, Vouchſafe to mind, how in Number He's much outvoted, equall'd at leaſt in Wiſdom, and Probity by thoſe, who teach and Practice it, as *Lawful.* Theſe have open'd the law of Nature, Scripture, and Church, yet do not find it culpable; People find conveniency in a ready Circulation, Mony otherwiſe would lie buried with dead Trade, the generality would be the worſe, and no particular the better. Neither the nature of Mony then, nor its final cauſe the Publick good, do any ways oppoſe the putting out of Mony at Uſe, but promote it, as much as the expoſing other

Goods, of which, Mony is the Subſtitute. This might ſuffice, to the quieting a well meaning Conſcience, but a further diſcovery of the Nature of Uſury is expected from me, to which now I proceed.

CHAP. II.

The Original Notion of Uſury, with its NAMES.

REſolving lately upon the peſormance of what, almoſt a year ſince, I had engag'd my Promiſe to the Inſtances of ſome Friends; it was my chance to fall in at the Stationers, with two ſhort Treatiſes of Uſury; the one written by an Engliſh Knight, Sir *Robert Filmer*, and Publiſh'd by Sir *Roger Twiſden*, with his Addition of Preface; the other of a Reverend *French* Clergyman, Monſieur *Du Tertre*; I found them as oppoſit in the Point, as if they would even in this, have maintain'd the National Feud, had the one Known the other.

But

But *Du Tertre's* Rhetorick, takes its full Career againſt a Divine of his own Country, who it ſeems in a Letter, had joyn'd with our two Knights, in upholding, that no Uſury is Condemn'd by the Law of God, but ſuch as exacts upon the Poor. *Du Tertre* on the contrary ſeems to hold forth, that all Intereſt taken for Mony put Out, without ſinking the Principal is Uſury. Neither hits the mark of Truth: the Knights fall ſhort, and *Du Tertre* ſhoots over; to level my aim better.

I begin from the Name of Uſury deriv'd from the Latin *Uſura.* And this in Property of ſpeech imports *Uſe.* So that Uſury in ſtrictneſs of Terms, implies no more, then the uſe of Mony, in it ſelf unblameable. How then did ſo foul a Vice come by ſo fair a Name? You might as well enquire, why the Furies were call'd *Eumenides.* I know in Greek its called τοκος. for the reſemblance paying Intereſt has, with the grief of Childbirth. In Hebrew its ſtiled *Neſhec* נשך The Bite of a Dog, in *Chaldaick Cabulia, an Undoing*, yet by the Jews, it was alſo nam'd *Tarbith* an Increaſe. *Ad Probri*

effugium, (*In* cap. 23. Deut.) ſays; *à Lapide uti à Latinis, honeſto Nomine vocata eſt Vſura.*

Wherefore my Inference is, That the gentle Name of *Vſury*, muſt cover ſore Aggrievances, and heavy Extortions, as the *Greek*, the *Hebrew*, and *Chaldaick*, give us to underſtand; but theſe are not to be found in our Caſe; This therefore muſt be clear of *Vſury*; a Monſter deteſtable, even to Heathens, a wonder it ſhould be ſo familiarly entertain'd, and welcom'd among Chriſtians, as is the Practice of Putting out Mony, a Token of its different Nature, from what thoſe Names imply, which having premis'd; I ſhall now endeavour to Dive after its Origin; Reaſon, and Hiſtory, diſcovers it to me, for ſuch as follows.

Upon the firſt Imploying of Mony, of which probably he had moſt, who had the moſt to Sell, by Changing a Stock of Goods into a Stock of Coin, ſome Engroſſing the greater Share, put others in Neceſſity of Borrowing; then Avarice in the Lenders, produc'd Oppreſſions, with other evil Arts, of unlawful Gain, for the Uſe of what was, or ought to have

have been Lent, according to the Law, of Natural Charity.

Such was the Proceeding, of the wealthier *Romans*, with the Commonalty, as is to be ſeen in Hiſtory, to the no ſmall Diſturbance of that only then Infant Commonwealth, let one Example ſuffice. The horrid ſight of a ſtout old Soldier, ſcourg'd and gor'd with his own Blood for failure of Paying Intereſt, at the Time prefix'd, enrag'd the People to a furious Sedition. The like perhaps, may have paſſed, among the *Jews*; We have a kind of Precedent. 4 *King. Chap.* 4. Where the Widow to *Eliſha* ſays: *Ecce creditor venit ut tollat duos filios ad ſerviendum ſibi. Behold the Creditor is come, to take away my two Sons, to ſerve him.* Exorbitant Rigour, for a Debt, which conſidering the Condition, of the Widow, of a Poor Prophet, was not probably very great.

Uſages ſo cruel, could not but excite a horror of Uſurers, even in ſuch, as by the Law of Nature, govern'd themſelves; Uſe-Mony therefore, was by the *Romans* in the 12 Tables ſtinted to 12 *per Cent.* then to 6, after to 3; and finally in the time

time of *Gemutius* Tribune, to remove all occasions of like Encroachments, a Prohibition of Use-Mony was Published, in favour of the People. No less was put in Execution by *Agis*, the *Spartan*, and not the *Athenian* General, as some have it, and ordering all the Accompt-Books of Usurers, to be burnt, in the Market-place. *Agesilaus* applauding he had never seen a nobler Fire.

But the Prohibition among the *Romans*, soon grew out of Date, and tho' renewed by *Cæsar*, to ingratiate himself with the Commonalty: yet putting out Mony at Use, by Necessity was reviv'd, in his Successor's Times, growing to the extravagant Heighth, of *Cent. per Cent.* if you may believe *Accursius*, a Famous Civilian, Cited by Sir *Roger Twisden* in his Preface. As for my Part, I question not, but all Oppressions, Exactions, and Frauds, exercised in the putting out Mony, were included in Usury, which may have been the Cause, why in the Days of Old, witness *Cato*, Thieves were Condemn'd to the Double, Usurers to the Quadruple: To which Custom, Peradventure, the Saying, (of

Zacheus

Zacheus might relate (*Luke* 19.) *Reddo quadruplum*; you may ſee more in *Covarruvias, lib.* 3. *Variarum*, c. 1. *n.* 5. of the averſion even Heathens had to Uſury.

This to have been the true, and ſole Notion, of Uſury as Prohibited, was *Calvin*'s Opinion, with his Followers, amongſt which our two Knights, allowing all Uſury, not render'd ſinful by oppreſſing the Poor, but againſt Reaſon; It being no leſs Uſury, to take beyond what is due from any, for the Uſe of Mony; ſince Perſons of Fortune, tho' never ſo wealthy, have Right to what is juſt. I only infer, That a commodious Rate, in the common Judgment of all Parties, can be no Uſury; taking Uſury, as hitherto deſcrib'd from its Origin, and expreſs'd by its Names. I come now, to its ſtrict Definition.

CHAP.

CHAP. III.

The Definition of USURY.

SIr *Robert Filmer* ſportsin his firſt Paragraph, teazing Dr. *Fenton*, and in him ſome others of the Church of *England*, for their Definition of *Uſury*. I cannot excuſe the Dr. of ſome Confuſeneſs. For where a word may ſignify differently, to take away Equivocation, one ſhould firſt diſtinguiſh, and then define. This Method I ſhall obſerve with the antient Divines.

Theſe make a three-fold Diviſion of Uſury. Firſt it may be taken, for a *Gain* which is Uſurious. 2*dly*, For a *Bargain* upon ſuch Gain. 3*dly*, For the *Intention*, or *Will* of ſuch a Bargain or Gain. The Firſt is term'd *Actual Uſury*. The Second is *Uſury expreſs'd by Covenant*. The Third is *Uſury purely Mental*. The two Latter derive their Malice, from the Firſt, as being the Object of both, all Promiſes or Intentions taking their Qualification,

on, from the Action, Promiſed or Intended; Wherefore prefixing the Word *Covenant* or *Will*, to the Definition of *Actual Uſury*, all three will be Defin'd Thus.

Uſury in the firſt Acceptance, is *a Gain immediately for Lending, or for Mony Lent as Lent.* Divines generally Agree in it. It's ſaid immediately for *Lending or as Lent.* To exclude all other Titles of Lucre, as *Gratitude, Friendſhip* in the Borrower, or other *Conſiderations*, hereafter to be ſpecified. *Gain* therefore is the *Genus*; by the Reſt, *Uſury* is differenced from other Acquiſitions. Hence of courſe follow the two other Definitions, *viz.* The Second *is a Covenant*; the Third is *a Will or Purpoſe of Gain purely for Lending.*

Sir *Robert* oppoſes thus: *Gain undoubtedly is a falſe Genus, for certainly, Uſury is a ſin of Commiſſion, and therefore an Action of Opperation. So that Lucre or Gain, which is only a Paſſion or Product of Lending, cannot be the Genus of it.*

Anſw. How far Sir *Robert*'s Skill exceeded in Law, I know not, His Logick certainly proves ſomewhat unfaithful to him.

him. It's granted then that *Uſury* is a Sin of *Commiſſion*, and an *Action* of *Operation*, if it ſo pleaſe him. And ſo is *Gain for Lending*. Neither is Gain, formally, and ſtrictly ſpeaking, the immediate Product, of Lending, but of taking, and it includes *Active* and *Paſſive*; *Active*, naming the Perſon Gaining, *Paſſive*, by naming the Intereſt Gain'd; Gain then is an Acceptance of Intereſt, exclude the Acceptance, neither Lending, nor Mony, nor both together, will make up Gain. But not to be ſo ſcrupulous in Philoſophy. Grant Gain to be a Product of Lending, it may be as well a Product of Selling, or Letting, why may not Gain then be drawn into a *Genus*, in reſpect of the ſeveral ways of Gaining, of which Gain by Lending is Uſury?

He preſſes. *Lending* for *Gain*, is not *Lending* but *Letting*. Beſides the *Gain* is *not for the Bare Act of Lending, but Uſing the thing Lent, that Men give Uſury.*

Anſw. The inſtance being made in Dr. *Fentons* Words, If I may believe the Knight, brings him in guilty, not only of Contradiction, which Sir *Robert* urges upon him, but of a very groſs

groſs Error in Morality. For if according to the *Dr*'s Definition, *Uſury is a Covenant of Lucre for Lending*, and Lending for Lucre; be *Letting*; a Covenant for *Letting*, by conſequence is Uſury. A Poſition unheard of.

To the Difficulty. *Lending* for Gain, is no *Letting*, but *Lending*; and *Lending*, and *Letting* eſſentially differ, as will appear more hereafter. *Lending* admits of no Recompence, by way of Juſtice. *Letting* do's, I willingly yield to the Addition, that Gain, is not forthe bare act of *Lending*; but the *Lending* we ſpeak of, includes both Act and thing as affected by the Act of *Lending*. For who Lends, and lends nothing? By *Lending* a thing, the Uſe of it is given, as it is not in *Letting*, and for what is given, to require Gain, is Uſury.

Towards the full Intelligence of the Definition, it will not be amiſs, to open the two-fold Senſe of the Word *Lending*, expreſs'd in *Latin* by two Verbs *Mutuare*, and *Commodare*, to Lend things, not to be conſum'd, in the Uſe, as a Horſe, or Houſe, with an Obligation, that the ſame individually be reſtored

is

is what corresponds to the *Latin Commodare*, to lend things which are Spent, in the Use; as Corn, Wine, and Mony, with a tie of having as much restor'd, and of equal Worth, tho' not the very self same, is what implies the Latin *Mutare*.

Between these two *Lendings*, this diversity intercedes. In the *First*, the Lender disposes only of the Use, of what he lends, not to be consum'd. In the *Second*, Use being inseparable from Consumption, the Lender grants both Use and Consumption of the thing. The First grounds an Action to the thing Lnet. The Second grounds an Action to as much, and as good in the same kind. As to the First, What may be *Lent*, may be *Lett*, whether Mony, or Goods, which perish in the Use may be Lett? shall be discuss'd. *Plautus* applies *Locare*, to let, to Mony, and *place* ones Mony, is the Common Expression.

But before I Proceed to examine this Point, I shall lay down some Truths very matterial, to the main? Truths I think not to be shaken, as being rooted in the very Definition of Usury.

CHAP.

CHAP. IV.

Poſitions drawn from the Definition of USURY.

FIrſt. *Gain, upon any Account, but Lending, is no Uſury.* The Proof. *Uſury* is a Gain, for a thing *Lent* as *Lent*. But *Gain* upon any account, but that of *Lending*, is no Gain for a Thing *lent* as *lent*, therefore no *Uſury*.

Secondly, *Uſury is a Sin againſt the Law of Nature.* Thus S. *Thomas*, with the reſt of Divines. The Proof. A Lender by giving the Uſe of what he Lends, makes the ſaid Uſe no more his own, but to exact Payment, for what's no more ones own, is an Injuſtice, viſible by the Law of Nature; therefore to receive Payment for what's Lent, *as Lent*, in which *Uſury* conſiſts is againſt the Law of Nature; and therefore, as Such, 'tis reduced to Stealth, forbidden in the Seventh Commandment.

Thirdly. *Not only Extortion, or Exaction upon the Poor, is Uſury.* The Proof; Increaſe for Mony *Lent*, *as Lent* may be required of the Rich, and this is Uſury; but in this no Opreſſion of the Poor; therefore Uſury conſiſts not only in exacting upon the Poor, as our two Knights hold, andthe Author of the Letter impugned by *Du Tertre*, ſeem to affirm.

Fourthly, *Whatever is not reducible to Stealth, and againſt the Law of Nature, can be no Uſury.* This is but a ſequel of the ſecond Aſſertion. The Proof. If all Uſury be reducible to Stealth, and againſt the Law of Nature, nothing can be Uſury, which is not againſt the ſame Law, otherwiſe this Contradiction would enſue, That all Uſury is againſt the Law of Nature, and that ſome Uſury is not; now to make nearer our Caſe.

Fifthly, *A Joint-Agreement in a Body Politick, for the Putting out of Mony at Uſe, cannot be againſt the Law of Nature.* Proof. Such an Agreement would render it no more Stealth, or Injurious to any. *Volenti non fit injuria.* It would accord with the firſt Rule of Equity; *Do as you would be done by*; It cannot therefore oppoſe the

the Law of Nature, being ſo conformable to it.

Concluſion. *The ſaid Agreement paſſed into Cuſtom, or Law, for the taking Intereſt for Mony put out, makes it to be no Uſury.* The Proof. It makes it neither to be Stealth, nor againſt the Law of Nature, but what's not againſt the Law of Nature, or Stealth, is no Uſury; therefore it makes it no Uſury.

If in the Proof of any of theſe Truths, Fallacy impoſes upon me, I ſhall be grateful to the Diſcoverer. I am no ſtranger to the Vertue of Law, as to Temporal Concerns; it is not only Lawful, but Conſcience, to ſubmit ones private Judgment to the Publick. Law regulates all Contracts as to *Meum* and *Tuum*, in ſo much as Property or *Domaine*, by Divines, as well as Lawyers, is defin'd with deference to Law. *Property*, they ſay, *Is a Right in a thing, extending its ſelf to all Uſes, and Diſpoſitions of the ſaid thing, not forbidden by Law.*

One may Object. It is not in the Power of any Legiſlative Authority, to make Uſury no Uſury, or Stealth no more Stealth, and to take Intereſt for Mony

Put out, is both Stealth, and Uſury.

Anſw. Though it be not within the Verge of Human Juriſdiction, to make Uſury, no Uſury, or Stealth, no more Stealth; yet it lies in the compaſs of that Power, and even of a Particular's Power, to prevent from being Uſury, or Stealth, what otherwiſe would be ſo, not by altering the Law of God, and Nature, againſt Stealing and Uſury, but by a voluntary Change, or Abatement of Property and Right. For Example. One beſtows a Parcel of Ground to be a Common, for the Poor. Had the Poor turn'd in their Goods, before its being made Common, they had been guilty of Treſpaſs, and Stealth, which they incurr not, after the Right of Common granted them. The Caſe, if I miſtake not, is ours: If a Perſon will freely give Five *per Cent.* and Security for the Principal, you may take it, as his Gift, ſtanding good in Law, without Uſury. This is what the Nation agrees to, including each Particular's Conſent; Perhaps, in Recompenſe of the Good, accruing to the general Eaſe, and publick Profit; and Perchance, by way of Penalty, for Prodigals

Prodigals and Spendals; ſo that what excluding this general Conſent and Accord, might have been Uſury in Vertue of the ſaid Agreement, ceaſes to be ſuch, For he that takes 5 *per Cent.* takes it as granted by Law and Cuſtom, for Mony Put out; and not as Covenanted by himſelf, for *Mony* as *Lent*, Cuſtom being Previous to the Putting out of Mony, and including a general Concurrence, which makes the Intereſt allow'd ſpontaneous, and freely given.

Nor doth this Procedure intrench upon any, but equally Provides for all, ſince as a Perſon putting out Mony, muſt Receive, ſo taking up, he pays as much. And it often happens, that the ſame Perſon, who has Mony out, is forc'd to take up, Suppoſe then he pay as much as he receives, Where is the Gain? This Diſcourſe, not manag'd, as I find by others, I think fit to Promote by the following Enquiry.

CHAP. V.

Whether the Law of the Land render the taking 5 per Cent. *ſafe in Conſcience?*

EXception may be made againſt the Queſtion, as grounded on a falſe Suppoſition, and that we have no Poſitive Law for the Putting out Mony at Uſe, but that it is purely Permiſſive; That Law may even permit Uſury, to avoid greater Evils, as Divines affirm, yet not Juſtifie it, as to Conſcience.

Anſw. That we have no Poſitive Statute Law, which as Sir *Robert Filmer*, pag. 92. informs us, varies as to the Caſe, it matters not; for 'tis enough we have Law. But we have even Statute-Law; for the Statutes againſt Intereſt for Loan, may be underſtood of Intereſt for pure Lending; and not only may, but muſt be ſo interpreted, all Gain *not purely for Lending*, being no Uſury,

ſury, as has been made out from its Definition. Much more ſince the *Conſtant Practice*, as the ſame Sir *Robert* tells us, *of the Common Law of this Land, and alſo Chancery in Point of Equity, doth not only allow Intereſt, where there is a Contract for it, but alſo gives it where there is none.* What better Interpreter of Statute-Law, than Common Law and Equity?

This Practice becomes Law, according to the Deciſion. L. *De quibus* 32. ff. *de Legibus. Inveterata conſuetudo, pro Lege non immerito Cuſtoditur.* An antient Cuſtom is deſervedly held for Law, and *Lege* 35. *de Legibus ſed & ea quæ longa conſuetudine approbata ſunt, & per annos plurimos obſervata, velut tacita civium Conventio, non minus, quam ea quæ ſcripta ſunt ſervantur.* But alſo thoſe things, which are approved by long Cuſtom, and have been obſerved for many Years, as a tacit Convention of the People, are no leſs to be obſerved than Written Laws. *Quid enim intereſt* L. 72. ff. *de Legibus. An ſuffragiis Populus ſuam voluntatem declaret, an Rebus ipſis, & Factis.* For what imports it, whether the People declare their Wills by Suffrages or Deeds?

True it is, Where the Legiſlative Power lodges not in the People alone, as it doth not with us, the Kings Tacit co nſent, is a requiſit, and in our Caſe we have it more than Tacit, ſince the Courts which all act in his Name, adjudge Intereſt to be pay'd; Now if practiſe is not only the beſt Interpreter of written Law, but kept up for the ſpace of ſome years, even preſcribes againſt Law, and its ſelf often becomes Law, who can except juſtly againſt the Queſtion made, as being upon a falſe Suppoſal?

Neither can our Law be ſaid, to be meerly Permiſſive, for a Permiſſive Law, grants no Action to an Uſurer againſt the Borrower. But our Judges, Poſitively uphold the Creditor, as to a Right he has by Law, to receive Intereſt; The Law then muſt allow of that Right, Judges being Oblig'd, to decide according to Law; Whence the Law appears to be Poſitive, and not purely Permiſſive; for were it meerly Permiſſive, it could give no Right, as is clear, to take Intereſt, but only wink at it, whereas our Law, grants Procuration Mony, to ſuch, who makes it their Buſineſs, to find, and Put out Mony

Mony for others. And is not this Poſitively to cooperate by the encouragement of Reward? The Law of the Nation then is clearly Poſitive, for the Putting out Mony at Uſe.

This Poſitive Law, I hold to be a plain Juſtification of the Practice, even as to Conſcience; It being to be Preſumed, in favour of the Law, that it would not Poſitively concur to what were unjuſt, were Uſury, were againſt the Law of Nature and God. This Preſumption ought to ſtand good, until ſuch time as the iniquity of the Law be Evidenc'd, which has not yet been done.

To queſtion its Juſtice, betrays an Ignorance of what force Law is. It even overrules and debars Natural Right, of Particulars, as in the Caſes of Preſcriptions, Laſt Wills, and Minors, who tho' true Maſters of their Eſtates according to the Apoſtles *Cum ſit Dominus omnium*, are hindred by Law to diſpoſe of them. What more Sacred and Binding than an Oath? Yet by the Law both of *Caſtile*, and *Portugal*, all *Obligations*, *Contracts* and *Conventions*, appertaining to the Temporal Court, if Sworn to, are made Void in Law

Law, to the end Cauſes appertaining to the Temporal, in vertue of an Oath, may not devolve to the Spiritual Court, to the Prejudice and limitation of the Temporal Juriſdiction; ſo the Council of *Trent*, to ſay nothing of Clandeſtine Marriages, (*Seſſ.* 25. c. 16. *de Reg.*) Annuls even an Oath of *Renounciation*, made two Months before Profeſſion. Evidence, of what force Law is, in Caſes much harder than ours, in which, all Parties making up the Legiſlative Power agree, as to a certain Rate, for Mony to be Put out, as Profitable to the Publick, and a fit means to prevent thoſe Strifes and debates, which might ariſe from the Titles, Divines generally allow of, for the taking Intereſt. *viz. Emergent Damage, Lucre ceaſing, and Danger of Principal*, which often vary, and are now more, now leſs.

Our Law then, ſtands upon good grounds, and makes good the ground its ſtands on; It being a Tenent amongſt Divines, that Law takes away doubt, it being in Poſſeſion of Command, Nay tho' probable Reaſon, but not evident, appear againſt its uprightneſs, it ſtill keeps its Poſt. (*Suares de Legibus* lib. 1.) Otherwiſe

iſe there being few Laws, againſt hich ſome objection might not be ſtar-d,too much licenſe in queſtioning them, ould encourage to *Non-Compliance* So that in Anſwer to the Queſtion, y Opinion is, ever vailing to better eaſon, that more Conſcience,ought to e made of condemning the Putting out ſony, as Authoriz'd by Law, than of ractiſing it. For were its Lawfulneſs oubtful, and not in ſo high a degree robable, if not Evident; as both Rea-on and Authority renders it,ſtill Poſſeſ-on ſtands for Law. Wherefore Divines old it no wiſe requiſit, That he that uts out Mony, either know the grounds f the Law, or expreſs the ways or Ti-les juſtifying it. But it ſuffices, he intend o do what is Juſt, and no ways Offen-ive to God; As in Prudence he may udge to be what Law, and conſtant ractiſe ſtand for.

This is the Deciſion of *Bartolus*. L. *Quis fugitivus* §. *apud Leonem de Ædil. Edict.* of *Navarrus*, *Binsfield*, and *Tira-quellius*, viz. *That a Contract in Uſe, with Learned Men, of known Integrity, though in Law ſomewhat dubious, obſcure, and moving*

moving some apprehension of Usury, is not to be judg'd Usurious; What would they have said to the Case, manifestly upheld by Law and Practice? I close this Paragraph with this Syllogism of S. *Tho. quod l. 9. Art* 15. which may serve as a Rule in this, and the like Cases. *Illud quod vergit in Commune Periculum, non est ab Ecclesia sustinendum, sed Ecclesia sustinet, ergo non est periculum Peccati Mortalis.* That which inclines to a Common danger, is not to be born with by the Church, but the Church bears with it, therefore no danger of Mortal Sin. Therefore no *Usury.*

CHAP.

CHAP. VI.

Whether Mony be Capable of being LETT.

THe Deciſion of this Queſtion alone, might put an End to the preſent Controverſy; for if Mony can be Lett as other Moveables, or Immoveables are, like Intereſt may be receiv'd, it being for *Letting*, and not for *Lending*.

That Mony is not capable of *Letting*, is commonly diſcourſed thus: *Location or Letting, is a Contract by which a Perſon's Goods, or Tenements are granted for Wages or Rent*: So that what belongs to the Hirer, is the bare Uſe of what he pays for, the thing Lett ſtill appertaining to him, who Letts it. But Mony is conſum'd in the Uſe, How then can it be Lett to Uſe, which makes it away?

My Assertion is, That MONY *may be* LETT.

That it may be Lett to other use than Spending, as for a Show, tendi to Preservation of Credit; and not Cheat, as Sir *Robert* flurts at Catholic Divines, or to be a Pledge, is owned St. *Tho.* 2da 2dæ, and by t Schools in general, but denied by hi in order to Spending; By reason he su poses, that Property of things consum in the Use, is not distinct from the U of them, so that who has the Use, h Property of them too. The Hirer th having the Use, has both; and therefor is no more a Hirer, but a Proprietor, f the Time he has the Use, so that Payi Consideration for it, He'll Pay for wh is his own, and the Lender receive Int rest for what belongs to the Borrower and in this he places the Sin of *Usury*.

What the Holy Doctor supposes the indistinction of Property and Us in things consumptible, since his time, h not only been question'd, but the op posit goes for the more current amon Divine

Divines, approv'd by no leſs then five Popes, witneſs *Leſſius* (*De Juſt.* lib. 2. c. 3. *Dub* 8. n. 38.) in this. (the now more probable opinion.) I ſee no greater difficulty in letting Mony, than Letting a Horſe, for the Hirer pays only for the Uſe, the Property ſtill remaining to the Letter.

But the Property of what; Since Mony in the uſe Periſhes, to him that lays it out?

Anſ. That is to ſay, Mony is in the time 'tis us'd, and no longer, and for that time the Owner letts it.

But that's almoſt Momentary.

Anſ. Be it never ſo ſhort, 'tis preferable, or at leaſt, *equivalent* to the longer uſe of a Horſe, or Houſe. This holds, ſpeaking of the ſame Phyſical and Individual Mony, which in its uſes Periſhes not in it ſelf, but to its Hirer. Yet Morally it ſtill remains, in the right the Creditor has to as much, it remains in the Security for its Reimburſment, it may alſo remain in the effects of uſing it, redounding to the Hirers Profit. So that the Letter retains the Property, tho' not the Poſſeſſion, of as much as the Hirer ows, and according to Law, may diſpoſe of it by Gift or Sale.

To

To the confirming what has been ſaid, upon due Reflection you'l diſcover, little or no difference, between the Letting Mony or a Horſe. A Horſe is let to be reſtor'd the ſame, not abſolutely, but conditionally, for if by the Hirers fault it dies, he's only oblig'd, to make amends, to its full Worth. And tho' the ſame be not return'd, yet it cannot be deny'd that it was Lett. The like happens in Putting out Mony; the Letter retains a Right either to the ſame, or as much; for the Nature and Intention of Hirage, is to have a Horſe proper for the Turn; the being This, or that, is wholly indifferent; by reaſon it is the Species, or Quality, which render things Valuable and Serviceable for Hirage, and not the individuality.

In like manner the Letter being inſured of having back a Horſe, in all reſpects as good as his own, ought to content himſelf as well, as with the Right he has to his own. And what if one ſhould Lett a Horſe, Conditioning to have as good, if not his own back; I inquire, whether this would not be a true Letting? Certainly it would. Why may not one then,

ther, in the same manner Put out Mony? For the Letter keeps a Right to have his Summ back, and one 20 *l.* in Moral estimation, is the same with another 20. So that the Summ remains still the Creditor's to be restored, as a Horse to the Lettor.

This seems to have been acknowledged by the Learned *Cajetan*, *Verbo Usura exterior* §. Nota fol. 578. *Nota 2do quod quia Lucrum Usurarium est ex mutuo, ideo siquis non mutuat sed accommodat seu locat, aut Vendit Pecuniam cum pacto recipendi aliquid Plus, non est Usura, sed liciti sunt hujusmodi contractus dum modo Pacta sint moderata juxta qualitatem Temporis.* Since Usurious Gain is for *Lending*, therefore if a Person doth not Lend, but Lett, or Sells Mony, Bargaining for somewhat more, it is no Usury, but such Contracts are lawful, so they be moderate, according to the quality of Times. Now our Law has struck up a Bargain for all, to the easing each Particulars of that Trouble; It hath also Provided against all immoderate Gain, assigning a Set Interest now more, and now less, Proportion'd to the Condition

of Times, to the excluſion of all Exactions, and Extortions. and thus the Law renders the Putting out Mony, no Lending, and the Intereſt allow'd, no Uſury.

Whereby the way, I take notice of a Conſtruction in Common Law, which Sir *Robert* teaches us, of the Word *Extortion* and *Exaction*. They are thus Diſtinguiſhed, ſays He: *Extortion is a Wrong, in taking more than is due. Exaction is the taking of what is not due at all.* This diſtinction, had it come from a School Divine, would ſcarce have eſcaped Sir *Robert*'s Cenſure, he's ſo ſevere upon them; for my part, I ſhould conceive, *that the more that is due, is not due at all*; He then who takes more than is due, in that more he takes, takes what's not due at all; and ſo *Extortion* in Subſtance, falls in with *Exaction*. The Digreſſion may ſerve at leaſt, for the Promiſcuous uſe, with Sir *Robert*'s leave, of the Words *Extortion* and *Exaction* whithout Cavil, upon a Nicety ſcarce worth the Laws Notice.

CHAP.

CHAP. VII.

Of the Obligation of Lending.

ON what has been ſaid in the Preceding Chapter, an enquiry attends by Courſe, concerning the Obligation of Lending, it being Manifeſt, that where the Obligation of giving or lending Mony ceaſes, it may be Lett. To Aſſigne the bounds of this Obligation.

Firſt. I reduce Dealings relating to Exchange of Property, either to Donation, or Sale, in Contracts reducible to Buying and Selling, a juſt Profit is allow'd of, Acts appertaining to Donation, as ſuch admit of no Gain, by way of Juſtice; for ſuch a Gain were Uſury in taking Intereſt, for what Donation, has made no more ones Own.

Now *Lending*, is as ſort of Giving, as *Letting*, is of Selling, and one, and the ſame thing, may be *Lett* or *Lent*, or *Given*; *Giving* makes the Thing no more the Donors, *Lending* makes a Thing, or at leaſt,

the use of a Thing, no more the Lender's. For the space of the time' tis Lent, so that, to require Payment for what is given or *Lent*, as being another's, is Palpable Injustice, and Usury, as has already been declar'd. In *Letting*, one Sells the use of what he Letts.

I Secondly Reflect, that as no man is Oblig'd to Prejudice himself, so where Self-prejudice Intrudes not it self, the Law of Nature Obliges one Man to help another, the Preservation of each, having a Reference to the Whole; and in this Case ariſes an Obligation, of Supplying our Neighbours.

Thirdly. In extreme Neceſſity, no place for *Lending*. The Neceſſitous having a Natural Right, to take what may relieve their preſent Want, all things in that occaſion becoming Common, and to Refuſe a Perſon, in extreme Neceſſity, is a ſort of Theft, in retaining from him, what Neceſſity makes to be his own, and no leſs Folly, in pretending to Lend, what in extreme Neceſſity is more another's, then yours.

Fourthly. In Caſes of great, tho' leſs urgent Neceſſity, than Extreme; the Wealth

Wealthy are bound, under Mortal ſin, to Succour the Poor, out of what they have Superfluous; in ordinary Neceſſities, they'r Oblig'd under Venial; Yet in thoſe Caſes, if *Letting* or *Lending*, will ſuffice their occaſions, all Obligation of giving ceaſes: This is generally the Doctrine of Divines.

Hence this Concluſion follows. *The Obligation of Lending is Conditional. Thus to be expreſs'd. If a Perſon, will not by giving, by Selling, or Letting; cannot relieve his poor Neighbour, by the Law of Nature, He's bound to Lend out of what He abounds with.* And in that Caſe to exact Intereſt, is Uſury unjuſtifiable, by any Law whatſoever. The ſaying of St. *Baſil* being moſt true, upon the Text of the 14 *Pſal. Qui Pecuniam ſuam non dedit ad Uſuram.* He that hath not given his Mony to Uſury. *Enim vero inhumanitas eſt maxima, Si is qui egeſtate premitur, mutuum ad Vitæ Subſidium quærat; Dans vero minime contentus, ex Miſeri calamitate Proventus & opes excogitet.* For certainly, ſays the Saint: *It is the greateſt inhumanity, whilſt one Borrows a Subſidy for life, the Lender not content with the Principal, Deviſes In-*

comes, and Riches, out of the Calamity, of one in Misery. In this Passage you have, in what, according to the Sense of St. *Basil, Usury consists.*

In other Cases, containing no Obligation of Lending, Mony may be Lett, or Put out, as Law and Custom allows. Since the Obligation of Lending, generally speaking, extends no farther, than to small Sums, sufficient to Relieve Pressing Necessity. Yet in case a Person freely Lends never so great a Sum, the Law cannot allow him Consideration for it; for This were Usury, as hath been more than once repeated, and Prov'd, forbidden by the Law of Nature, and God; to which Inferior Laws, to be Laws, must Conform.

Having prov'd what Occurr'd unto me, not so expresly Treated of in Schools, towards the making out the Lawfulness of taking Interest, for Mony Put out; 'tis time I should produce, the Common Titles, Assign'd by Divines, for the Justification of it.

CHAP.

CHAP. VIII.

The Common Title aſſign'd by, DIVINES.

CONſidering the Nature of Things, which may be Lett, I find in none, ſo many, and ſo good Titles, for juſt Gain, as in the Letting of Mony. A Houſe for Inſtance, ſtands Empty, of no Profit, or preſent uſe, to the Owner, apt to decay, for want of Inhabiting; yet it may be Lett, and Rent received for it. Upon what Score? For the living in it? But that kept it in Repair; And is it Juſt, the Inhabitant ſhould pay for what he betters? It may be ſaid, it is the Tenant's Conveniency, which deſerves the Rent. The ſame with greater Reaſon, may it not be ſaid of Mony?

But beſides the Hirers Convenience, the inconveniencies which attend the Lettor, are yet more Conſiderable, by Reaſon, Mony being the Price of Things, Contingencies Daily, Produce occaſions of Lucre

Lucre, and the want of it, unforeſeen Damage. The depriving oneſelf of the Profit, which probably might be made, and the Danger of undergoing Prejudices, are rateable, worth Recompence, and may be Bargain'd for, Reaſon dictating as Juſt, to provide for Self indemnity. For which Cauſe, as I ſuppoſe, the Mony taken upon thoſe Accounts, is named *Intereſt*; as behoving each one, to require it as Due.

One may interpoſe: Theſe Titles have no Place in ſuch as Hoard and Keep Mony idle in their Coffers.

A. An inconſiderate Objection. Whilſt the Mony lies in Coffers, the Difficulty may be ſhut up with it. But every one hath Right to open his Coffers and to make Uſe of his Mony, to his beſt Advantage; and this Right by Putting it out, he makes it over to another. Beſides in good *Philoſophy*, Mony being a pure *Medium*, it is not coveted and lov'd for its own ſake, but for the Service it may be put to; as advantageous Purchaſes, Traffick, and the like, in order to Profit; and in Caſes of Suits, Sickneſſes, Impriſonments, and other too frequent Accidents, in order to prevent the harm, the Want of Mony

ny in like Misfortunes, would Occaſion; of theſe Services he that puts out Mony, deprives himſelf, and that Deprivation deſerves to be conſider'd. Upon this ground runs the Deciſion of S. *Thomas*, *Opuſc. de Uſuris*, where treating of ſuch as ſell dearer, becauſe upon Truſt, affirms 'tis Uſury. *Si tantum propter expectationem ſolutionis fiat*; That is, if it be for meer forbearance, but if it be to keep himſelf harmleſs, that it neither may be Uſury nor Injuſtice. But grant that neither Ceſſation of Profit, nor Emergent Damage, be in the Caſe.

Still the *Hazard of Principal* is Conſtant and great. What a multiplicity of falſe Dealers? Caſualties fruſtrate the beſt Intentions, Securities of ſoundeſt Appearance, prove often Litigeous, producing much Coſt, Trouble and Care; the expoſing ones ſelf to all this, Is it not eſtimable and worth its Value?

It may be ſaid: All Lenders are expos'd to theſe Inconveniencies, for which cauſe, they being eſſentially connex'd with Lending, either Uſe-Mony, upon ſuch Titles, as being for Lending is Uſury; or thoſe Titles, taking away the Nature

Nature of Lending, Usury will become a meer Sound, and not a Word, as signifying nothing.

Answ. It is granted that all Lenders, are more or less Subject to those Inconveniencies, but 'tis deny'd that they are Essential to Lending. For Lending includes no more than the Act of *Lending*, the *Use* of what's Lent, and *futurity* of Repayment; these possibly may consist without loss of Gain, adventitious Damage, or Hazard of Principal, as a Lender presumes they will, and ventures it. So that he retains no Title for Interest; This an Usurer heeds not, but blinded by Avarice, even in that Case will have Profit, with the Principal. A lender then, tho' he be expos'd to Loss, it is because he will lend, be it for Motives of Charity, so commended in Holy Writ, and he is to expect his Interest from God; or be it out of Friendship, and he's repaid by his own Judgment, that it becomes him so to do. But it were a bad illation to say: he could not Bargain upon the score of those Dangers, and so doing, he had been no more a Lender, and therefore no Usurer.

The

The Inference which was added, that Uſury will become a meer Sound, and not ſo much as a ſignificant Term, ends in Air, and is of no Subſtance. Sir *Roger Twiſden*, and ſome others, make Uſury a pure Invention of Churchmen, to bring more Griſt to their Mills, which were it true, they wouldnot ſtudy to bring it to nothing, as the Objection Pretends. But Divines according to Duty, diſtinguiſh no Uſury from Uſury. To exact Intereſt for what was freely Lent ſtill remains Uſury, independently of all Churchmen and Canons. To Lett where oblig'd to Lend, is Uſury; taking above what Law allows, is Uſury, at leaſt Preſumptive; Continuation Mony, too much in Practice, if ſome new Conſideration ariſe not, I hold to be Rank Uſury, as receiv'd Purely for *Lending*; all other Titles, being ſatisfied with the Intereſt, Taxed by Law.

Some not over-vers'd in theſe Matters, may require what I mean by Continuation-Mony?

Anſw. I mean too frequent a Practice of Uſurers, their Cuſtom is ever to have Mony at hand, to Supply ſuch as ſhall

ſhall Addreſs unto them, *Firſt*, They require ſo much for Procuring the Mony, then they Prefix a Set Time, for which they Lett it. *Finally*, The Term expir'd they Demand what they think fit, for Continuing it in the Borrower's Hands. This Laſt I ſtile Continuation Mony, and hold to be plain *Uſury*.

Againſt theſe Titles from the Name of *Uſury*, *Du Tertre* diſcourſes it after this Manner. A name is taken from the Nature of the Thing 'tis plac'd for, but the Name which is given to *Uſury*, is for taking Increaſe, for the *Uſe* of *Mony*; therefore *Uſury* conſiſts preciſely in taking the ſaid Intereſt. He promotes it thus: General *Idea*'s imprinted in the Minds of all Men, cannot be falſe but *Uſury* in the *Idea* of Scripture, Fathers, Philoſophers, imports Intereſt for the *Uſe* of *Mony*, without Exception of emergent Damage, loſs of Gain, or danger of Principle; To receive Intereſt therefore for the *Uſe* of Mony, even with thoſe Exceptions, is *Uſury*.

Anſw. I paſs by the Major of his firſt Syllogiſm, tho' it be falſe, that Names be taken from the Nature of things, except

cept the Names given by *Adam*; for the ſame thing in different Languages, is expreſs'd by different Names, made ſignificant by the Will of Men. The Minor is deny'd; for one that buys Cheap, receives Intereſt for the *Uſe* of his Mony, and yet incurs no guilt of *Uſury*. The Conſequence therefore is no better than the Premiſes.

To the Promotion of his Argument, the Major is granted, the Minor deny'd, and ſo is the Conſequence; His Major I Reaſſume and Retort it. General Idea's, *Pag.* 114. imprinted in the Minds of all Men, cannot be falſe; but it is an Idea drawn out in the Minds of all Men, by the Author of Nature, that Man may provide againſt emergent Damage, loſs of Gain, and danger of Principal, that he may ſubmit to the Agreement of his Nation, tending to the Common good, therefore its Contradictory muſt be falſe.

He inſtances Uſury by all is underſtood, for Intereſt taken for the Uſe of Mony. *Uſura quæ ſcilicet pro uſu Pecuniæ accipitur.* Uſury by Reaſon 'tis taken for the Uſe of Mony. Says the Law.

Answ. In Law the word *Usura* has both a good and bad Sense; Interest taken for the Use of Mony Lent, is *Usury*; Interest for the *Use* of Mony upon other Accounts, is no *Usury*. And *de Facto* in his *7th Chap.* He justifies several Cases, in which Interest is taken for the *Use* of Mony. It was a piece of Oscitation in him, not to take Notice of *Usury*, as express'd in other Languages; the *Greek*, the *Hebrew*, and *Chaldaick*, import more than Pure Interest for the *Use* of Mony, and could not be derived from the Latin *Usus*.

But besides the aforesaid Titles;

This other way, Divines propose for the Justice of Putting out Mony. One may Purchase a Pension, or Rent Charge affecting some Land; or Tenement, and it is stiled *Real*, or affecting only the Person, and 'tis nam'd *Personal*. The Contract is so to be drawn up, that by Repayment of the Principal, the Obligation of giving the Pension, be clear'd; or upon Releasing the Pension, the Principal restor'd, both Parties Covenanting for Performance. As to the *Real*, 'tis judg'd by most Divines to be no

no ways *Uſurious*, by Many, and of great Credit, as to the Perſonal, Reaſon being much the ſame for both; ſo that excluding all *Uſurious* intentions, both Contracts are held ſafe in Conſcience. Our Cuſtom then may be ſaid to involve a general Covenant of this Nature.

Whatever Statute therefore has been Enacted, againſt taking Intereſt for Loan, can only be in force, in Caſes of unlawful Gain; and we are beholden to Divines, for finding out juſt ways of attaining to a Profit, which could not be made by *Uſury*, without ſin. This is ingenuouſly confeſs'd by Sir *Robert Filmer*, tho' no Friend to Catholick Divines. But Reaſon, is ever Reaſon, come it from who it will. His words are *Pag.* 124. *It is no Sin to avoid a Statute by Lawful means: If the Contract of Bargain, and Sale be in it ſelf Lawful, why ſhould it be a Vice, and not a Vertue, thereby to avoid the Penalty of the Law, ſince Laws are properly made, to force Men to avoid them, by Lawful means?*

CHAP. IX.

Whether in some Case, it stand with Law, and Conscience, to take More than Five per. CENT.

THe ordinary Method of Putting out Mony, having been discharg'd of the Imputation of *Usury*; a Motion may be made, whether in some Case, one may not improve his Mony, to more than the Current Interest? That one may do it, by way of Traffick is unquestionable. So that any means of Gaining, more than Five *per Cent.* justifiable, by the same Reasons, and Law, as Traffick is, cannot but be Approv'd of, even in Putting out of Mony.

My Conclusion is that, *in some Case, the Gain of more then Five per Cent. is Lawful.*

The Case is of a Triple Contract, taught by most and ablest Divines. The first is a Contract of *Partnership.* The second

cond of *Inſuring* the Principal. The Third of *Inſuring* the Intereſt, all three Maintain'd by Law, and Practis'd upon Exchanges, which certainly they would not be, were they againſt the Law of Nature and Uſurious.

Suppoſe then, that all Succeeding according to Expectation, by the firſt Contract, each Partie's Gain in a Year, be Computed Thirty *per Cent*; Suppoſe by the ſecond, a Partner Inſure his Principal, by giving Ten *per Cent*. Suppoſe finally, that by a third, He ſell for Ten more, the hopes he has of Gaining Twenty; for hope of Gain is Valuable, and matter of Purchaſe, as appears in the Buying the Caſt of a Nett. Thus Acting, the ſaid Partner, will have Right, to Ten *per Cent*. and the Concluſion is made good.

In *Sevil*, as I am inform'd, no leſs than Twelve *per Cent*. is taken and given by Merchants, and *Du Tertre* acknowledges, that Merchants of the Town-houſe, of *Paris*, and Exchange of *Lyons*, pay each Term, which is Quarterly, two and a half, Ammounting to Ten *per Cent*. in a Year. And queſtioning himſelf, what may be ſaid to it? He coldly Anſwers *que pour L'ordinaire*

cet Interest est Usuraire. That for most part, such Interest is Usurious. So that of its own Nature, it is not, for were it, of its own Nature, Usurious, it would always be so, and not only ordinarily. But to return.

Divines agree in the Lawfulness of the Triple Contract, so it be made, with distinct Persons, and not with a Partner. Some modern *Rigorists*, except against it when made with the same. Their Reason is, that the Nature of the Contract of Society, is to be such, that both Loss, and Profit, be equal to all Parties *L. 1. & Seq. π. & leg. 1. & Seq. C. pro socio.* But the two latter Contracts excludes partaking in the Loss, therefore not to be made with a Partner.

Answ. At least the Point is gained, of its Lawfulness in some Case, of making more than Five *per Cent.* To the difficulty of Contracting with the same Partner, Divines answer, That by the Law 'tis only evinc'd, that in Vertue of the sole Contract of Society, one cannot require from a Partner, to be insured, but that it is no ways against the improving the said Contract, by Addition of the two others.

I

I add, That the Perſon ſo contracting in Law, is not the ſame, but in this Caſe, as in others, is equivalent to three, *per fictionem Juris*, as the Civilians term it. In the Firſt, he acts as a Partner, in the Second, as an Inſurer of the Prncipal, in the Third, as a Purchaſer of the Hope of Gain, which the Partner Sells him; ſo that in each he acts, as a ſeveral Perſon; and why may not all this be perform'd by a Partner, as well as another? Since Partnerſhip, rather gives him the Preference, to the Gain in Proſpect?

Againſt this, *Du Tertre* urges the Bull of *Sixtus Quintus*'s Beginning. *Deteſtabilis Avaritia*, where he condemns the Contracts of Society, in which the loſs of Principal remains not in him, who Puts out his Mony, but is to be reſtor'd him with Intereſt, in Caſe it Periſh in the Partner's hands, without any Profit accruing to him.

Anſw. Firſt in that Bull, ſuch Contracts only are condemned, wherein by the ſole Contract of Society, or Covenants by Conſtraint involved in it, the whole Danger of Principal, without any Conſideration, is caſt upon a Fellow-

Partners, without any Contract of Insuring, freely made, and agreed to by both Parties, which *Jure Communi* hold good. See *Bonac. Disp.* 394. *Puncto Unico. n.* 46. citing many as *Molina, Salon, Nav.* &c. and *F. Tuccius*, a Man of known Sanctity and Learning, in his Letter to *Comitolus*, witnesses plainly, that *Sixtus Quintus*, being ask'd concerning this Bull, answer'd; That he only forbid the Conventions usually joyn'd to the Contract of Partnership, which are commonly condemn'd by Classical Authors, not such as they thought just; And this *Tuccius* had from the *Cardinals*, *Toletus*, and *Sanctorius*, who were Commissioned to draw up that Prohibition.

Secondly, The Bull is of no force, where not receiv'd, as the same *Bonac* observes, nor is it Accepted in *Germany*, *France*, *Sicily*, or *Flanders*. *Less.* lib. 2. *de Just.* cap. 23. *Dub.* 13. and *England* may be added. But whether receiv'd or no, 'tis decided by the *Rota* in *Farinaccius Decis*, 137, and 138. And *Coccius* a Famous *Canonist*, Dean of the *Rota*, in a *Rotal Decis*, *An.* 1602. concludes expresly, That the Bull comprehends only such

ſuch Caſes, as are Uſurious *Jure Communi*; which Deciſion you'll find in *Cherubinus*, in the Compendium of the *Bullarium*, *Scholio primo ad Bullam* 45. *Sixti Quinti*.

By theſe Allegations it appears, with how ſmall Conſideration, and much want of Study, *Du Tertre* inſiſts upon that Bull. It cannot but be very diſagreeable to Men of Senſe and Reading, to hear ſome wordy, ſhallow Preachers, and leſſer Divines, condemn theſe common Methods of Palliated Uſury. Let the beſt of them uncloak it, by Proving that the Gain made in any of the ways hitherto Rehears'd, and Authoriz'd by the Publick Good; By Civilians, by Canoniſts, and Divines is purely for Lending, in which conſiſts the Eſſence of Uſury; or that they are againſt the Law of Nature.

This is to be done to Evidence, for if it remains doubtful, Poſſeſſion carries it for Cuſtom and Law. And were it not a Tyrannizing over Souls, to ſend them to Hell, more than God himſelf can do without Evidence for Uſurers? Whole Nations for Practiſing of it, to Hell;

Divines for Teaching it, to Hell; Lawyers to Hell, for Abetting it, Judges for upholding, to Hell. But Practiſing what? Teaching what? Abetting what? Upholding what? What only they deem'd an Injury to None; a Conveniency to All, ſuitable to the Law of Nature, and no wiſe offenſive to the Almighty: And for this to Hell? If this be a Zeal! It is a Zeal no better than Injuſtice. What an embroilment of Conſciences? What a confuſion of Reſtitutions to be made by the now Living, for their Anceſtors, and for the yet Living, by themſelves, could the miſapprehenſion of a few Auſtere Fancies, without any I Say, not manifeſt, but even probabable Reaſon, ground an Obligation of believing them? Were I furniſhed with Monſieur *Du Tertre*'s Oratory, How would it pleaſure it ſelf, with a breathing or two, upon ſo fair a Courſe? But enough, if not too much of what's unneceſſary, and with the three following Enquiries, I cloſe this firſt Part.

CHAP

CHAP. X.

Of the Briſtol Bargain, Pawn Brocage, and Intereſt upon Intereſt.

First Aſſertion. *The Briſtol-Bargain no Uſury.* The Reaſon is, That the Gain made by it, is not for Lending, but a Real Purchaſe of an Annuity, to be paid for a ſet Number of Years. And tho' the Intereſt by the Seller's Induſtry, may come to more than Five or Six *per Cent.* this cannot make It Uſury, otherwiſe the Profit made by Selling and Buying, which in a Year, may exceed 20. would be Uſury, to the deſtruction of Traffick.

Second Aſſertion. The *Briſtol-Bargain*, as repreſented, is both Juſt and Commendable.

The Bargain as propoſed to me ſome 20 Years ago, is this; Five hundred Pounds then running at Six *per Cent.* was given for an Annuity of [illegible] hundred

Pounds to be Paid Yearly, the ſpace of Seven Years. I then thought it ſafe, in Conſcience, and ſtill do, the more that I hear, 'tis warranted by Law; For it contains the requiſit of Equality between the Price, and what's Bought, ſo that 'tis guilty of no Injuſtice; It is not purely for Lending, ſo that it is free from Uſury. 'Tis true, the Purchaſer by Putting out the hundred Pounds yearly Paid him in, upon the expiring of Seven Years, Reimburſes his Capital, and comes to Gain 330 *l.* and ſomewhat more, but this, without the leaſt Oppreſſion of the Seller, who, I ſuppoſe, takes the Principal, in order to make a Purchaſe, or the Paying a Debt; and not able to pay in the Whole at once, is eaſed by Paying in yearly, a Hundred, and the laſt Two hundred, paid in lieu of *Intereſt*, falls ſhort by Ten of the Current *Intereſt* at Six *per Cent.* So that albeit the Purchaſer may Gain a hundred and Twenty Pounds, above the Current *Intereſt*, the Seller of the Annuity, gives leſs by *Ten*, and by conſequence the Bargain is commendable.

Third Assertion Pawn Brocage, not to be excus'd from Usury.

By *Pawn-Brocage.* I understand not, the taking a Pawn for Security, of ordinary Interest, without Power, of Alienating the said Pawn; But in the Assertion I mean the Practice, of taking more than the usual; and that Monthly, under forfeiture of the Pawn, in Case of Failure. This I take to be *Usury*; my Reasons are.

First, It is expressly against *Law*, so that that the general Agreement, which justifies the Common way, of Putting out Mony, is against *Pawn-Brocage.*

Secondly, The overplus a *Pawn-broker* takes, other Titles being fully Recompense'd is presum'd to be taken purely for Lending.

Thirdly. Tis the pressing Necesity of the Poorer sort, which *Pawn-brokers* prey upon, Exacting no less, than Fifteen *per Cent.* and often more, to the great Oppression, of their Poor Brethren, which is the very Notion of Usury, deliver'd in Scripture.

Fourthly. *Pawn-brokers* are so Insured, of their Principal, by Pawn, that the Title

Title of its Danger, and Trouble in Recovering it, almost wholly Vanishes. But *Emergent Damage*, and *Cessation of Lucre*, still remain.

Answ. Grant they do, which Brokers themselves know best, yet the Danger of Principal, equaling both, and ceasing; either *Pawn-brokers* are bound to take, but half Interest, upon those Considerations, or others may take the Double, for the Danger of the Principal; But this would be Judg'd Extortion. *Pawne-brocage* therefore, can be no better.

In favour of *Pawn-Brocage*, Presidents are taken from the *Mounts*, as they are call'd of *Piety*, Erected in most *Catholick Cities*, and approv'd of by the *See Apostolick*, as receiving something more than Current Interest, towards the Maintenance of Ministers and other requisits to that Pious Work.

Answ. The Disparity is great. First its no good Consequence, from Publick to Private Autority, for were it, whatever the Publick Acts, each Particular might Persume to do, to a Confusion of Order, and Justice. For example, Vindicative Justice, as incumbent to the Publick, is

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a Vertue, yet no good Preſident, for a private Man, to Revenge himſelf, This being reſerv'd from him, as an Incompetent Judge. It doth not follow then, that *Pawn-brocage* Practis'd by thoſe *Mounts*, and Adminiſtred by the Publick, may be put in uſe, by every Particular, *Avarice* being as dangerous a Paſſion, and as blind as Revenge.

Secondly. Thoſe *Mounts*, are to take no more than what's preciſely Neceſſary to uphold them, for Relief of the *Poor*, without making the leaſt Gain to themſelves. *Pawn-brokers* aim at raiſing Fortunes.

Thirdly, It enſues that *Pawn-brokers*, are an agrievance to the *Poor*; whereas thoſe *Mounts*, are an eaſe from the Double, Treble, and more, which by *Jews*, and *Jewiſh Brokers*, would be Exacted of them; They were named *Mounts* from the Bulk of Mony Levied by the Prince, Magiſtrat, or Charitable Coutributions *of Piety* from the end they were Founded, the Relief of the Poor.

Fourthly. If after a year, which is the ſpace given to redeem the Pawn, the Pawn be Sold, Satisfaction being made

for

for Principal and Intereſt, the Surplus is to be reſtored to the *Borrower.* How well, this is perform'd, by *Pawn-brokers*, let their Conſcience tell. However, according to the Law of Nature, they ought not to be their own Dealers, and take advantage from the Miſery of the Poor. For this Reaſon I apprehend *Leo the* 10th. with the Approbation of the *Lateran Council*, held by his appointment, requires the Confirmation of the See *Apoſtolick*, to the Erecting the ſaid *Mounts.* On what Authority then can *Pawn-brokers* rely, who not only Act without it, but conſequently againſt it, and our National Laws? So that Reaſon and Authority duly conſidered, our Aſſertion holds.

Fourth, Aſſertion *Intereſt upon Intereſt, as the words ſound declares it ſelf Vſury*, they importing double Intereſt, for one and the ſame Principal, which is Exaction.

But the Caſe may be ſtated thus, a years Intereſt for example of Twenty Pound is due. Now in caſe of *non* Pay*ment*, can the Creditor demand new Intereſt, for what's unpay'd, from the time it was due? *Anſ.*

Anſw. If the Creditor at the due time, demands not his Intereſt, but voluntarily lets it run on, by way of forbearance, he can demand nothing, by reaſon the forbearance, as being of his own free Will, inveſts the Nature of a Gift, for which as ſuch, nothing can be required, and ſo to take Intereſt, for what ſtill remains Intereſt, as never having been Converted, into a Principal, would be Uſury. But ſuppoſe the Creditor, in due time call for his Intereſt, and by Agreement, with the Debtor, in place of receiving it, Converts it into a Principal. I ſee no Uſury in it, for as he may joyn an other Sum to the former, ſo he may the Intereſt; and the Conſideration to be had for it, cannot be ſaid to be Intereſt, upon Intereſt, but upon what was Intereſt, and is now become a Principal.

What if the Debtor being call'd upon, refuſe to Pay what's due?

Anſw. The Caſe is the ſame. For from the time 'tis Challeng'd, the Debtor is an unjuſt detainer of what would be a Principal, in the Creditor's hands, and capable of improving; now the loſs of the ſaid Improvement, is to be made Good. Where-

Wherefore the Civil Law distinguishes Usury of pure Gain, for Lending, and Usury of Compensation. The first is ever forbidden, the second is allow'd of (L. *Socium.* ff. *pro socio.*) Where if a Partner defers to Pay in due time, his fellow Partner, 'tis thus decided: *Usuras quoquæ præstare debet, sed non quasi Usuras, sed quod socii Interest, Moram eam adhibuisse. He must also Pay Usury, not as Usury, but because it concerns a Partner, that he should not suffer by Delay, and L.* Usuras Cod. de Usuris. *Cogitur Emptor qui in Solutionis Mora est Usuras insuper solvere Venditori. The Buyer who defers Payment, is to Pay over and above, Interest to the Seller.*

Notwithstanding what has been said, if we have any Peculiar Law, against taking Interest for what was Interest; I Think it not safe in Conscience to require it. Law being a Rule of Property and consequently just Gain. And there may be just Reason for the Laws forbidding it. *viz.* to put a Stop to the Ruin of Families which certainly attends such, as either cannot, or neglect to Pay the first Interest. For the burden, of a new Payment coming upon them, will render them less able to Pay the Second.

Having

Having performed, I hope as far as Neceſſary, the firſt Part of my Task, in clearing the Putting out Mony at Uſe, from the foul Scandal of Uſury, by confronting it with the Law of Nature, as interpreted by Divines, and Lawyers, I conclude with an Anſwer to the Complaint of *Du Tertre:* That if Divers by taking up Mony, run themſelves into Poverty; others by Putting out, forfeit their Principal, 'tis the fault of Particulars, and no want of Proviſion in the *Law*, which by moderating *Intereſt*, provides for the Firſt againſt *Extortion*; and allows to the Second, the Security they ſhall require. Caſualties ought not to be Rules, otherwiſe on the ſame Account, all Trades muſt Ceaſe, ſince a Profeſſion which is one Man's Making, is often the Undoing of another. One by taking up Mony clears his Eſtate, and prevents great Miſchiefs; or Recruits his ſinking Trade and Reputation; another Redoubles his Debts; the Fault is not in taking up the Mony, but in the Management.

PART.

PART. II.

Of the Case as to Scripture.

CHAP. XI.

USURY Consider'd as to the Old TESTAMENT.

THe Reverence and Compliance due to God's Word in Holy Writ, takes Place of all Reasons and Authorities hitherto made use of; nor can any Human Law, or Custom, tho' seemingly tending to the Publick Welfare be of force, in opposition to Divine Command. For, as *Tertullian* solidly Determins; *Ad exhibitionem operis Prior est Majestas Divinæ Potestatis, Prior est Auctoritas imperantis, quam utilitas servientis.* The Majesty

Majeſty of Divine Power, the Commanding Authority, precedes the Utility of him that ſerves. It is but Rational therefore, that I ſhould confer what has been ſaid, with thoſe Texts of Scripture, in which Uſury is condemn'd.

To the Explaining how far they relate to our Caſe.

The firſt Paſſage is, *Exod.* 22. *v.* 25. *Si pecuniam mutuam* &c. *If thou lendſt Mony to any of my people being poor, that dwelleth with thee, thou ſhalt not urge them, as an Exactor, nor oppreſs them with Uſuries.* The Second is *Levit. cap.* 25. *v.* 35. *Si attenuatus,* &c. *If thy Brother be impoveriſhed and weak of hand, and thou receiveſt him as a Stranger, and ſojourner, and he live with thee, take no Uſury.* And Ver. 27. *Thou ſhalt not give him thy Mony to Uſury, and an overplus of the Fruits, thou ſhalt not exact of him.* The third is Deut. c. 23. v. 19. *Non fæneraberis Fratri tuo,* &c. *Thou ſhalt not lend to thy Brother Mony to Uſury, nor Corn, nor any other thing, but to a Stranger.* This is whatever *Moiſes* has left in his Law touching Uſury.

The two firſt places are but an Explanation of the Law of Nature, both Conditional, and no abſolute Command. The Condition is, *If thou Lend*, which implies not ſo much as a Precept of Lending. But that's not all; the Condition requir'd to the guilt of Uſury, as the Words lie, is not meerly of Lending, but lending *to the Poor, and weak of hand, viz.* not able to work; From them to take more than was Lent, is Oppreſſion, Prohibited under the Notion, *Thou ſhalt not oppreſs them.*

To the Poor, little ſuffices for their preſent Wants, and to require ſole Repayment of them, is more, than to take Intereſt for greater Sums from the Sufficient. The Law therefore aims not the leaſt at the Caſe we are in; for who puts out Mony *to Poor and weak of hand*? Few or None. And yet the Law condemns only ſuch of inhumanity as do, by ſtiling this *Uſury*; *Neſhec, a Ravenous bite, or the bite of a Dog.* A name perfectly misbecoming the Practice of Putting out Mony, Profitable to all Parties concern'd. And no wonder if *Uſury*, as expreſs'd in Law, grounded

ſo

ſo juſt a Deteſtation of it in holy Fathers, moving them to ſo frequent, and vehement invectives againſt it. The Plaineſs of the Expreſſion in the Law, has encourag'd ſome to fix all Uſury upon the Oppreſſion of the Poor, and would incline me to do the ſame, did not Evidence of Reaſon, the Light and Law of Nature, extends its Notion yet farther, to a *Gain* made purely for *Lending*.

The third place in *Deuteronomy*, tho' ſomewhat varying in Words, contains no more than the former. This I make out; Firſt, from the Title, Occaſion, and ſcope of the Book. Secondly, from the Text it ſelf.

The Title of the Book given by the *Rabbins*, is *Miſne*, a Reiteration of the Law, and by the *Septuagint*, *Deuteronomium*, Signifying a Second Law; not as different from the former, Publiſh'd on Mount *Sina*; but as being a Repetition of it. See *Theodoret. q.* 1. in *Deut.* S. *Auſtine. q.* 49. S. *Athanaſius*, in *Synopſi.* S. *Jerome* words it thus; *Deuteronomium 2da Lex, & Evangelicæ Legis prefiguratio, nonne ſic habet ea quæ prima ſunt,*

In Prologo Galeato.

ut tamen nova ſint omnia de Veteribus? *Deuteronomy* Prefiguring the Evangelical Law, hath it not the firſt things after ſuch a manner, that of Old, they ſeem new? And this by Reaſon of the Different and ſtatelier Tone, *Moiſes* takes in this Book; When after 40 Years Travel, and glorious Atchievments, being upon his Departure for a better Life. He, to a new People, their Progenitors being deceaſed, makes a ſecond Promulgation of the Law, but more Emphatically, to ratify the Covenant between God and that People. By the *Title* therefore of the Book, it's Occaſion and Intent, the Law written in it, in Subſtance, varies nothing from it ſelf, given in the former.

This 2*dly*, is made out from the Text it ſelf. For the Negative, *Thou ſhalt not Lend to Uſury*, is no more than equivalent to the Conditional. *If thou Lend, thou ſhalt not take Uſury.* And ſo 'tis coincident with the former. Whether this *Law* were only *Judicial*, as the Knights will have it, proper to the *Jews*, or *Moral*, extending it ſelf to all Mankind; I examin not, but ſuppoſing it Moral, yet

yet it nothing affects the Case of Putting out Mony, without Oppression, or Injury.

The Law thus expounded, affords us in few words, a general and true Construction to the many and vehement Expressions of the Prophets against *Usury*. For the Prophets, tho' inspir'd to be the Preachers, and Interpreters of the Law, yet they were no Givers of a new Law; Wherefore our Saviour, *Mat.* 22. puts a distinction between the *Law and the Prophets*; Usury therefore with them, must signify no more than what is written in the words of the Law. According to these, S. *Basil* glosses the 5*th Verse* of the 14*th Psalm*. And *David* in the 71 *Ps. Verse* 13. by the words, *He shall spare the Poor and Needy*, gives us the Sense of the following *Vers. From Usury and Iniquity, he shall redeem their Souls*; As *Psal.* 54. he joins *Usury with Guile*.

Neither doth the Place in *Ezek.* c. 18. much Exagerated to little purpose by *du Tertre*, express any thing, not Mentioned in the Law, for that *more* or *increase* there mention'd, and in other Places, is the same specified in the Law, for *Usury*, forbidden under the Proper Name of *Neshec*.

And the milder of *Tarbith* or *Increase*, given it by the *Jews*, as was Remark'd in the 2*d*. *Chapter*. An honest Increase, and upon just Considerations, is no where blamed.

Christ indeed, to whom all Power was given, in Heaven and Earth, abrogating the Ceremonial Law, and some Judicial of the Old Testament, might have Established, a Peculiar as to the present Case, But his Divine Wisdom, left things, as to that Point in the state they were; Declaring only when questioned, by a Sawcy Doctor, *Matt.* 22. That on Charity, *the whole Law depended, and the Prophets*. So that if the Putting out Mony, be no Aggrievance, by consequence not against Charity; As to *Law*, and *Prophets* it rests Good.

CHAP.

CHAP. XII.

VSURY Conſider'd, as to the New TESTAMENT.

THe ſingle Text, making to the preſent Purpoſe, is *Luke* c. 6. *v.* 35. *mutuum date nihil inde ſperantes. Lend, hoping nothing thereby.* This paſſage, however ſo much Inſiſted upon, gives little Aſſiſtance to ſuch as are Averſe to the Putting out Mony at uſe. Our *Saviour* in that *Chapter* Intermixing many things of Counſel, with others of Precept; Be pleas'd to peruſe it. This ſaying, Divines hold to be only of Counſel, and the Conjunction of Lending, with other Works, which are not of Precept, Is no feeble Confirmation of it. *Verſe* 29. 'Tis ſaid: *Unto him that ſmiteth thee on the one cheek, offer alſo the other. And* verſe 30. *Give to every man that asketh.* This lays no Obligation of Giving; no more doth the firſt of Lending.

Beſides Reaſon dictates the Propoſition to

to be capable of Reſtriction; For tho' a Lender, be bound to hope no Increaſe by Lending, he may hope for a Requital of Gratitude, Friendſhip, or a like return; This indeed as being of leſs Perfection, than to hope it from God, we are Counſelled to abſtain from, by hoping *nothing* from Man. Otherwiſe, why might not the unnam'd Contract, *Do ut Des. I give to be given to*, as well hold Good, being Authoris'd by *Chriſt* in the ſame *Chapter* if words be taken as Writen; *Give; and it ſhall be given to you?*

But no need of all this. The particle *thereby* Moderates and reſtrains the Negative *nothing*; So that the words of *Chriſt*, as I Apprehend, contains both *Counſel* and *Precept*, *Counſels* in the Affarmitive part; *Lend*, out of the Caſe of Neceſſity; in Caſe of Neceſſity; Precept, and Prohibition in the *Negative* part, hoping nothing *thereby*, viz. *for Lending*.

Three other Places, in the New Teſtament, preſent themſelves. The firſt, *Mat.* 25. *v.* 27. in the Parable of the Talents. *Thou oughtſt therefore*, ſays the Lord, to the Idle Servant, *to have put my Mony to the Bankers, and then at my coming, I ſhould have*

have receiv'd mine own, with Uſury. The ſecond is, *Luke* the 19. *v.* 23. Where the Noble Man, to the ſame Purpoſe utters himſelf. *Wherefore then gav'ſt not thou my Mony into the Banks, that at my coming, I might have required mine own with Uſury?*

My intent go's no farther than to ſhew by theſe Parables, How the putting out Mony at Uſe, was Cuſtomary among the *Jews*; a Parable being: *The application of a well known thing*, as the Putting out Mony was; *to aleſs known*, as the Kingdom of Heaven. The Parable morecver repreſents unto us a twofold Gain: the one of Trade, the other by Putting out Mony at Uſe. The omiſſion of this, as obvious and of leſs Trouble, as alſo leſs Profit, is reproached to the idle Servant; Uſury in that place, being taken in a good Senſe, as Interpreters obſerve. It having then been a Cuſtom of the *Jews*, to put out Mony, had it been Uſury ſo to do, expreſly againſt Law; Chriſt ſo Zealous in the reform of other Diſorders, had never paſſed ſo great an one in ſilence.

The third place, *Matth.* the 21*th*, and 30. the 2. relating the Execution done by our Saviour upon the *Bankers* in the

Temple

Temple, has scarce a shadow of Difficulty; that Comportment of his, having proceeded from the abhorrence not of Usury, but of the *Profanation* of the *Temple*, as appears from his Words; *Make not the House of my Father, a House of Trading.*

St. *Paul* in his first to the *Corinthians*, *Chap. 6.* in the Number of the excluded from the Kingdom of Heaven, specifies *Thieves* and *Avaricious*, but makes no mention of the Putters out of Mony; the true Son of Usury being comprehended in *Theft* and *Avarice*. For Avarice is the Parent of Extortion, Fraud, and other unlawful Dealings, and therefore *Extortioners* are nam'd there. For such is the violence of *Avarice*, where it reigns, that it murders all thoughts of Charity, and breeds such a Passion for Lucre, that it catches at all Means, Just, or Unjust; and one of its proper Effects, questionless is Usury. A Disposition of this Nature, constitutes an habitual Usurer, its Execution, and Actual.

More than this is not to be cull'd out of Scripture, as to the true Conception of Usury, so frequently, and severely reprov'd

reprov'd by Holy Fathers; Out of whom Monſieur *Du Tertre* has handed the choiceſt places to me. Wherefore, my next work is, to give them their true Conſtruction, that by Miſtake, they may not work upon the Weaker.

PART. III.

Of the Caſe, as to Church.

TESTIMONIES of Fathers, Councils, and Popes, Anſwer'd.

CHAP. XIII.

CITATIONS of the Latin Fathers.

AS beyond all Doubt, Holy Fathers were given to the Church for Interpreters of the Divine Law, and true Senſe of Scripture; ſo the Practice of the

the Church interprets them; and is to be their final Rule, and Judge, as well as ours. Some things are ſpoken by them Orator like, others Dogmatically. Dictates of the firſt Nature, are no ways Obligatory; Sayings of the Second are yet no farther binding than the Church accepts of them. I ſay not this, that I meet with any one Quotation, that condemns the Common Practice, but only to give a true Account, how far their Authority reaches. They generally run down Uſury, *viz.* Either taking Intereſt for Lending, or Extortion. And he that puts out his Mony at Reaſonable Rate, cannot be ſaid to receive meerly for Lending, or to Extort.

A regard alſo is to be had, to the Times and Circumſtances, in which they Writ; Mony then Running at *Cent. per Cent.* and Heatheniſh Cuſtoms, of Exacting upon the Poor, ſtill being in Vogue. Theſe Reaſons might influence their Zeal. and give Fire to their Vehement expreſſions; and tho' a chief reſpect; is to be had, to the Primitive Doctors of the Church, yet we are not to loſe the Eſteem, due to thoſe who according to the Apoſtle, God has

plac'd

plac'd in his Church, from time to time, to Succeed them; nor ought they to be Slighted, with the Leſſening Character, of a few Caſuiſts, as *du Tertre* makes bold to do. The Caſuiſts, are Devines, neither a few, but the greateſt Part, and the Learnedſt, on which we ground our ſelves, as to the Caſe.

The Holy Father, moſt quoted, is St. *Amb.* in his Book upon *Tobias*. The Title of his 14 Chap. is *de Uſura Divina Lege Prohibita, Of Uſury forbidden by the Divine Law.*. There he thus defines. *Quod cunque ſorti accedit, Uſura eſt quod velis ei nomen imponas.* Whatever accrues to the Principal, is Uſury, call it as you Pleaſe; and in the following *Chapter* Expounding that Paſſage of *Deut. Non Feneraberis Fratri tuo ſed Alieno. Thou ſhalt not Lend Mony for Uſury to thy Brother, but to the Stranger, Quis erat*, ſays he; *Tunc Alienegena, niſi Amalec, niſi Amorrhæus, niſi Hoſtis? Ibi Uſuram exige, cui merito nocere deſideras, cui jure inferuntur Arma huic Legitime indicantur Uſura.--Ab hoc Uſuram exige, quem non ſit Crimen occidere.--Ubi Jus belli, ibi etiam Jus Uſuræ. Who was then the Stranger, but Amalec, but the Amorrhæans,*

but

but an Enemy? From him who justly thou desires to Harm, Exact Usury---Take Usury from him, who it is not a Crime to Kill---Where there is Right to War, There, there is Right to Usury. So far St *Amb.* after his Eloquent Manner, in a Transport of Zeal; For these words of his, contain much Matter of Dispute; As for example; He restrains the Word *Stranger*, to sole Enemies, which Argues not so strict a Discourse. Nor do any as I know hold it Lawful to take Usury from an Enemy. But to Examine each Particular of the Passage.

The First, whatever accrues to the Principal is Usury. Must either be understood with St. *Basil*, of an Increase, Extorted upon the Poor, or as Divines commonly do of an Increase, meerly for Lending. Wherefore *Lancelot*, by *du Tertre*, so Highly Commended. *Lib.* 4. of his Institutions. *Titulo Sept. de Usuris.* Thus defines Usury. *Usura est quidquid ultra sortem mutuatam percipitur.* Whatever is receiv'd above the Principal *Lent*, is Usury. Now that this must be the Meaning of the *Saint*. I Prove it from the Title of the *Chap.* which is of *Usury, &c.* But no

Usury

Uſury but in one of thoſe two ways; therefore the *Increaſe* the *Saint* ſpeaks of, muſt be in one of the ſaid ways. If the Place be not thus Expounded, it fails of Truth. A free acknowledgement, made by the Borrowers, accrue to the Principal, is it Uſury? And tho' in the Banks of *Rome*, it be not in the power of him that Puts out his Mony, to call it in at Pleaſure; yet it lying ſafe, and the Principal remaining ſtill his, The Intereſt accrues to the Principal; and will any one Preſume to condemn the ſaid *Mounts* of Uſury?

The ſecond Place; may be retorted againſt the Alledger. The Uſury S. *Amb.* ſpeaks of, is Parallel'd to *Killing*, conſequently to the greateſt Blow, to be given by an Enemy; ſuch may be heavy Extortion, and Oppreſſion of the Poor, or a Treacherous Exacting Intereſt, for what was Lent; but nothing of this, in our Caſe, Suſtained by mutual Conveniency. Suppoſe the *Amalecites* or *Amorrhaans*, had made ſome Conſtitution amongſt them, of giving Five or Six *per Cent.* for the Benefit of Trade, and eaſe of the Indebted, who otherwiſe, would be expoſed to much greater Damages, and for other ends tending

ing

ing to the Publick Good; would the *Jews*, by placing Moneys in their Hands, have made a Bloody War upon them? Would they have put them to Slaughter? Would they in the leaſt have injured them? Surely no. It is violent then, to inforce thoſe ſayings upon the Caſe before us.

To S. *Amb.* Succeeds S. *Jerom*, in his Commentaries on the 18 *Chap.* of *Ezekiel*, where having declared, That Uſury is not only for Mony, but alſo for other Conſumptible Goods; he exemplifies it in Seed time, in Corn; in which occaſion, one lends ten Buſhels, to receive 15 at Harveſt, and this by way of Charity. The Saint thus inſults their Uſurious Hypocriſy. *Reſpondeat enim nobis breviter, Fœnerator Miſericors; utrum habenti dederit, an non habenti? Si habenti utique dare non deberat, ſed dedit quaſi non habenti, ergo quare plus exigit, quaſi ab habente? Let the Merciful Uſurer, anſwer us in ſhort, whether he gave to one, that has, or to one that has not? If to one that has, he ought not to have given it, if to him that has not, Why exacts he more from him, as from one that has?*

St.

St. *Jerom's* Ironical Challenge, given to an Usurer, reflects not upon the Putting out Mony, as is clear. By one that *has*, and one that *has not*, he means *Rich* and *Poor*; as to Rich, no Occasion for Lending, as to Poor, they ought not to be treated as Rich. This is the wholestrength of the *Dilemma*, which seems rather to allow taking Interest of the Rich, and not of the Poor; for could Interest be receiv'd from neither; How would that Instance hold good? *Or why exacts he more from him, that has not, as if he were one that has?* It also deserves reflection; that the more exacted of the Poor, was no less than 50 *per. Cent.* or by such *as thought themselves most Just*, as the Saint expresses it, 25. And this for Corn, which could have render'd its owner, who had it to spare, no more, than the Market Price; whereas Mony, is highly improvable. Let some of our Country Usurers therefore, answer the 2d Part. With what Conscience, do you exact the more, for what you lend, and that only from Seed-Time, to Harvest of 50 or 25 *per. Cent.* from the Poor?

Again by the word *Giving*, he may mean *Lending*; This being a sort of Gift, and then St. *Jerom* instances well, he ought not to have Lent, to one that has since the obligation of Lending, is grounded upon our Neighbour's Necessity. And what doth this concern us? For tho' there be no Occasion of Lending, there may be just Cause of Putting out Mony, and placing it with such as think it but Reasonable to pay the Lawful Interest.

The 3*d* is S. *Austine*, upon the 36 *Ps. Conc.* 3. He writes in this Manner. *Si fœneraveris homini id est Mutuam Pecuniam dederis*, &c. *If you lend Mony to a Man, from whom you hope to receive Increase, or more, than you gave him, be it Corn, Oil,* &c. *You are an Usurer, to be disapprov'd, and not Prais'd*: Mark what the Usurer does, *He will give less, to receive more.*

A. S. *Austine* plainly tells us, what Usury is, and only confirms the Common Definition; Usury, *says he*, is a Will of giving less to receive more; And that you may not mistake, what he means by *Giving*, it is *Lending*, as the Preceding words make out, *If you Lend a Man*. By S. *Austin*

then

then is defin'd an Usurer, who for Lending will have more, than he lent. And he who gainsays this, knows not the nature of Usury.

These are the three Doctors, Monsieur *Du Tertre*, thought fit to select from among the *Latins*, out of which a Place or two more, I have omitted for brevity sake, as having their Answer in what has been said.

CHAP. XIV.

AUTHORITIES of Greek *Fathers, Answer'd.*

TO the three *Latins*, are join'd three of the *Greek* Church, by *Du Tertre*, concluding in S. *Austin*'s words; *Quomodo Verba Scripturæ intellexerunt Sancti, sic utique intelligenda sunt. Words of Scripture are to be understood, as the Saints understood them.* By Saints, S. *Austine*, without doubt, means the unanimous consent of Fathers, and not a few dubious Sentences.

I begin with the Author of the imperfect Work, *Hom.* 38. upon *S. Matthew*; Tho' cited last, as Arguing closer than the other Two. To reflect upon the Author's Guilt of Heresie in some Passages, I take to be little to the Purpose; but I weigh his Reason. He enlarges himself, upon the Difference between Letting of Lands, and Letting of Mony. First, *Quoniam Pecunia, non ad aliquem Usum disposita est*, &c. Mony is not order'd to any Use, as a Field, but only to be the Price of Things in Buying and Selling. Secondly, He that Hires a Piece of Land, or House, has the Fruits of the Land, or Conveniency of Lodging; so that it is an Exchange of Gain for Gain. But if you retain your Mony, it fruits you nothing. Thirdly, Lands or Houses decay with Use, Mony when 'tis Lent neither Diminishes, nor Deteriorates.

Answ. Authority grounded upon Reason, go's no farther than the Ground it builds upon; Wherefore, answering Reason, I satisfy Authority. To the first 'tis granted, That the Use of Mony, and a Field, much differ. Mony of it

self

ſelf produces nothing; a Field of its own Nature is fruitful; The Uſe of Mony, is to be the Price of things; the Uſe of a Field is not; yet in this they agree; That as a Field gives Graſs, or Corn by Tillage, ſo Mony employed in Buying, or Selling, yields Profit, and of the Right to this, he that Puts out Mony deprives himſelf. I further wiſh the Oppoſers would acquaint me with the Products of a Houſe, and other Artificial things, or even of Mony, when Lett out only for Show, or to be a Pledge; as on thoſe Accounts, S. *Tho.* allows it may be. *2da. 2da. Qu.* 78.

To the 2*d.* He that Hires Mony, has the Profit, or at leaſt the Right to Profit by it; and ſo makes an Exchange of Gain for Gain. But Mony by Keeping, affords nothing.

What then? But it would by Spending, And before Spending, doth it not enable the Owner to profit by it, as Occaſion ſerves? And is this Nothing? Hath it not more of Hardſhip, that another ſhould have the whole Gain by Laying out ones Mony, than the Onwner ſhould take part with him?

To the 3*d.* That Houſe and Land decay

with use 'tis answer'd, they decay more without it, and tho' Mony as to it self, do not deteriorate; yet a Principal may perish wholly to the Creditor, but Land cannot; Besides, he that Puts out his Mony, is at least depriv'd of its Use, in order to Gain, which is equivalent to a Decay, in House, or Land; And what doth a Horse, or House yield by Keeping unlett?

Greg. of *Nyssa*, in his 4th *Hom.* upon *Ecclesiasticus*, Elegantly delivers himself in these Terms: *Fœnus qui aliud Latrocinium & Parricidium nominaverit*, &c. *Whoever shall stile Usury a second Robbery, or Murthering of a Parent, will say no more than becomes. For what matters it whether you break a House as a Thief, to seize another's Goods; or Assassinate a Man upon the Road to take what he has; or whether by Necessity of Paying Use-Mony, you get what appertains not to you? God said to the living Creatures, be fruitful and multiply. But the Brood of Gold, of what Matrimony do's it come? What Mother gave it Conception?* &c.

Answ. Who sees not, how enormous the Usury must be, against which, S. *Gregory* declares, with this Eloquent Flourish?

But

But if no Murther of Parent, no Robbery, no Assassination, be incident to the putting out of Mony, this cannot be the Usury, at which he aims. A just Contract is the Matrimony, from which the Brood of lawful Interest comes; publick Convenience is its first Parent; whereas the Usury against which he inveighs, *was*, (they are his Words,) *Conceiv'd by Avarice, brought forth by Iniquity, Cruelty being the Midwife.*

S. *Chrysostom. Hom.* 57. upon S. *Matth.* appears much of the same mind; *Quid irrationabilius quam ut sine Agro, Pluvia, & Aratro seminare contendas?* &c. *What more irrational, than to Sow without Land, Rain, or Plow? I give, and grant,* says the Usurer, *Not to have and to Hold, but to have more Return'd.*

Answ. Granting it were a madness to Plow without Land, Rain, or Plow, as it were, to Sow in the Air; yet I am of Opininon, that neither the *Saint*, nor any other would deny; there are other ways of just Gain, without Land, Rain, or Tillage, whereof one is, the Putting out of Mony at Use. In the words of the Usurer: *I give and grant, not to have and*

hold, but to have more Restor'd; Usury is both expos'd, and condemn'd; for in the Terms *Giving* and *Granting*, is expressed an Usurer's *Lending*, in order to Receive *more thereby*; and that *more*, was at the immoderate heighth of that Age.

I close this *Chapter*, Entreating only the Reader, to consider, whether these, and like Allegations, are not equally against all Princes, Exchequers, and Banks in Christendom, beginning from that at *Rome*, which ought to be a President as to Conscience? For tho' such as place their Mony in the Bank of *Rome*, to take away even the Shadow of meer *Lending*, cannot call it in at Pleasure, yet they may Sell the Pension, or Interest they duly Receive; and so Reimburse themselves of their Principal, and there never being scarcity of Buyers, it comes to be equivalent to the Power of Calling it in; Which being so, I hope *Du Tertre*, and his Adherents, will grant *Rome* to be no less Vers'd in Scripture, and the obliging Authority of Holy Fathers, than themselves; and yet not so Presumptuous, as to run, and Act in opposition to the said Authority. It remains now to

discuss

discuss, whether it succeeds better with him, in his Pretensions to Popes and Councils?

CHAP. XV.

Of the AUTHORITIES *of Councils.*

THE Quotations taken out of the Decretals, and some Synods, make me suspect, that either *Du Terre*, understood them not, or mistook the Question. The cause of this my Apprehension will appear, in the Examination of what he Produces.

I say not, says he, *That the Council of* Nice. Chap. 17. *Forbad Usury to the* Clergy, *each one Interpreting the Place, in his own Sense; But the Council of* Carthage *hath Prohibited the* Clergy *to Exact Interest of any Kind*: c. 16. *Nullus Clericorum amplius recipiat, quam cuiquam commoduerit, Let none of the* Clergy *receive from any one more than he Lent.*

Answ.

Anſw. Much to the Purpoſe; to receive more than is Lent, and on the Score of Lending is Uſury, ſo that the Difinition of Uſury, has the Councils Liking. Yet what if the Council, ſhould have forbid the *Clergy* to Putt out Mony at Uſe, as improper to their Calling; It nothing concerns the Layety nor queſtion its Juſtice. But now it is in Practice with *Clergy*, as well as *Layety*. Wherefore Doctor *Sage's* Preſident of the Engliſh College at *Doway*, being Demanded by a Perſon of Quality, of the Opinion of his Community, as to the Caſe; with great Ingenuity Anſwer'd, they were Divided, for ſuch as had Mony to put out, thought it Lawful, ſuch as had none were againſt it.

What he brings out of an *Epiſt.* of St. *Leo* to the Biſhops of *Campania*, is much of the ſame Strain, the *Pope* orders Puniſhment for thoſe, *who Practice Uſury, and Strive to grow Rich by it. Qui uſurariam exercent Pecuniam & fœnore volunt ditescere.*

Anſ. Had *Du Tertre* prov'd the Common Practice Uſury; This and the Reſt might have been Serviceable to him. But to ſuppoſe it to be Uſury without Proof, and

and then to Condemn it as Prov'd is not fair, but a sort of Juggle, to amuse the unlearned with Quotations.

Gratian is Cited in the 2d. Part of his *Decretals*, *Cause* the 14. q. the 3. c. 4. who out of an Ancient Council of *Agde*, held the 6th Century, *An.* 506 Defines Usury, *Usura est*, &c. *Usury is when more is Required than was given, as for example, if you give* 100. *and require more Back, or a Bushel of Corn, and Exact somewhat above.*

Answ. Giving is taken there for Lending, and that to the Poor, as may be gather'd from the Smallness of the Summs; Besides in Reality, in our Case, one receives no more than he gives; for a yearly Improvement, being worth at least Five *per Cent.* of this he's made Master, who receives the Principal. So that even in Compliance with the Decision as it lies, no more is taken than given.

This is all, the Author could Pick, out of Ancient Councils, against which, he Apprehending length of Custom had Prescrib'd, he passes to later Decisions, A Transition which betrays, either Shallowness, or Prevarication, as

to the Cause he undertakes, since Custom is the best Interpreter of Law: Lib. 37. ff. *de Legibus Optima Legum Interpres est Consuetudo.* Now Usury being against the Law of God, no Custom can prescribe against the said Law, but it has Prescrib'd in favour of the Common Practice, as he Apprehends; Therefore the Common Practice can be no Usury, and if Custom of time Pass'd, could Prescribe against the Ancient, why may not present Custom Prescribe against what he *Quotes* of Fresher *Date*? For that both *Clergy* and *Regulars*, take up, and put out Mony as Occasion requires, 'tis too well Known now a days, to be denied.

Little or nothing therefore to his Purpose, being to be gathered out of General Councils, *Du Tertre* passes to Provincial Synods In that of *Milan* under *Pius Quartus*, it is forbid to take Interest, upon any Account whatsoever, Yearly, *for Mony offer'd to be Paid in.* In that of *Mecklin* in the time of *Pius Quintus.* 1566. *Du Tertre* seems to Triumph, tho' of no General Obliging Authority. Its Decree is, *Synodus Statuit & ordinat ne quis Tutor*, &c. *The Synod Decrees and Ordains that no*

Trustee or Guardian, under Pretence of Increasing the Patrimony of their Pupils, *Lend the said* Pupills *Mony to receive Yearly, a certain Lucre above the Principal, with Power of calling in the said Principal, Declaring such Bargain to be Usurious and that against such Lenders as Usurers, to be Proceeded to Punishment, as Prescribed by Canons.*

Answ. The *Synod* of *Milan* Determining only as far as Cited by *Du Tertre*, in the Case *Mony be offer'd to be Paid in*, rather Allows, than Disallows Interest for it, when not offer'd to be Pay'd in, or when it is Put out, according to the Rule, *Exceptio firmat Regulum in alijs*; but the *Synod* in expres Terms agrees unto it, when Granted by Law, closing its Prohibition, *Nisi quatenus jure, nominatim permittatur.* In so much that *Bonac*, tho' a *Milanese* thought it not worth his while, to take notice, of what no ways oppose's his, and our Opinion. *Bail* therefore the Learned compiler of Councils *Tom.* 2*do*, *Pag.* 492. judges the Council to be no ways in force against the Common Tenents; for were it, he Rightly Instances, *Cur ergo Bonacina, & alij*

alij Scriptores hujus Provencia, Plures ex hujusmodi Casibus licitos tutati sunt sine cujusquam offensione? Why then has *Bonacina*, and other Writers of this Province, defended many of the Cases Mentioned in the Council, without offence to any?

The *Synod* of *Mecklin*, in the sense *Du Tertre* wrings it to, is not excepted of, in the very Province, which only it could Oblige, as appears from constant Practice. For my Part, I Gues the Decree strikes, at deceitful Trustees, and Guardians, the word under Pretext Denotes as much. They commit Usury, in taking Mony for *Lending*; expres'd twice in the Decree, they Cloak it under a Specious Pretext, of the *Orphan's* Profit, and it is no wonder if such Practices be Condemn'd by the *Synod*. Setting aside this or a like Glos; The *Synod* would pass for Extravagantly Uncharitable, in forcing *Orphans*, to live from their Infancy, upon the Principal, to the Beggaring them, when come to Age; Wherefore even our Statute Laws, tho' Judg'd by some Dubious in the Point of Loan, allows the Putting out *Orphan's* Mony. On the other Part with what Conscience can a Guardian expose his *Pu-*

pil's

pil's Mony, without ſecuring the Principal, and Power of calling it in?

Truſtees therefore may put out their Pupil's Stock, ſo it be effectually for their Profit, as it is done without reclaim either of Church, or Magiſtrate, taking always ſuch Methods, as may exclude not only the Intention, but all appearance of Uſury. Hence *Leſſius*, not long after this Synod, writing in that ſame Dioceſs makes no mention of this Decree, but juſtifies the way of Putting out Orphan's Mony; and *tho', he thinks fit it ſhould be forbid for the future.* I conceive, he added that Clauſe, for fear Ignorance might be an Occaſion to ſome of committing Uſury, by taking Intereſt purely for Lending, which without Uſury, might have been bargain'd for, on other Accounts, and in due forms.

The Aſſemblies of *Melun*, *Bordeaux*, and *Rheimes*, are fully Anſwer'd, by what has been ſaid, and the Practice of all *France*, in Caſe of real Oppoſition, Overſways in Authority, thoſe few Particular Synods.

The Aſſembly of *Melun*, *Du Tertre* tells us: repeats the words of that of *Milan*, conclu-

concluding with the Saying of Christ, *Lend hoping nothing thereby*; the like doth that of *Bourdeaux*. The Council of *Rheimes*, of greater Authority, as being approv'd by the Pope, clearly allows the Doctrin delivered hitherto of Usury, In these Terms, *Tit. de Fenore cum sacra littera excludant eum a Divino Tabernaculo, qui Pecuniam dederit ad Usuram aperteq; nuntient, ut mutuum Demus, nihil inde sperantes: Quisquis praeter sortem Principum ex mutuo aliquid amplius exegerit, vel acceperit, cujuscunque generis illud sit modo Pecunia estimari possit Usurarius esse censeatur.* Since the Holy Scripture, excludes him from the Tabernacle, who gives his Mony to Usury, and manifestly declares, *That we lend hoping nothing thereby*; whoever shall Exact, or receive above the Principal of what was Lent, of whatsoever kind it be, so it be worth Mony, let him be judg'd an Usurer. Remark well the Expression, *For what was Lent*; there lies the Stress: But what Council, or Assembly ever say, That Mony Put out, as in our Case, is *Mony Lent*?

CHAP.

CHAP. XVI.

The AUTHORITIES of Popes.

A *Lexander* the III. having condemn'd Uſurers in the Councils of *Tours* and *Lateran*; To the Caſe of the Arch-Biſhop of *Genoa*, propoſing the Dealings of ſome Merchants, who Sold dearer for retardment of Pay, writes thus: *Licet contractus hujuſmodi, ex tali forma non poſſit cenſeri nomine Uſurarum, nihilo minus tamen, venditores Peccatum incurrunt, cum cogitationes hominum, omnipotenti Deo nequeant occultari.*

Anſw. What could be alledg'd leſs favourable, to *Du Tertre*'s Purpoſe? For the Pope ſeems to excuſe from Uſury, what Divines condemns for ſuch; *Tho' ſuch Contracts*, ſays the Pope, *as to their forms, be not to be held Uſurious, yet thoſe that Sell after that Manner, ſin*; whereas

Divines, affirm to be Uſury, to take any thing for *pure Delay* of Payment; the ſaid Delay being eſſential to Lending. The Pope's then Meaning I take to be, that ſuch a Contract, cannot be proſecuted in the exterior Court as Uſurious; yet that ſuch Dealers, for the ordinary ſin, by forcing thoſe, who cannot give preſent Mony, to pay for the forbearance, which is plain Oppreſſion, arguing an Uſurious intention of Gain, ſuch to have been His Holineſſes Meaning appears from the enſuing Clauſe: *Since the Thoughts of Men, cannot be hidden from the Omnipotent God*; If this wiſe Pope was ſo Cautious, as not to condemn for expreſs Uſury, Intereſt for pure Forbearance; Would he approve the forwardneſs of ſome, no Popes, in condemning of Uſury, an Intereſt ſettled by common Agreement, or by Covenants, and Titles thought juſt by Divines? One of theſe is the danger the Seller undergoes, of loſing both his Ware and Price, with the Trouble in recovering it, and that Conſideration on this ſcore may be taken, is not only the Opinion of *Ioannes Martinez de Prado. Tom. 2. Theolog. Moralis*,

c. 27. §. 2. Citing 16 more, but before him of the Learned *Sylveſter*, Maſter of the ſacred Palace, and eight others quoted by him, inſiſting on the Doctrin of their great Maſter, St. *Tho. Opuſc.* 73. c. 10. *Si enim Venditor Rem ſuam*, &c. *If a Seller intends to ſell Dearer, not for the Time only, but for the Damage like to befall him*, or to redeem *the Vexation, probably to be ſuffer'd, in Recovering his Debt, either by Reaſon of the Malice, or Impotency of his Debtor; then he's excus'd from ſin.*

To *Urban* the III. three like Queſtions were Propos'd. *cap. Conſuluit; Whether thoſe were to be look'd upon as Uſurers, who ſold Dearer by reaſon of Staying for their Mony? Or thoſe who tacitly intended it? Or finally thoſe, who would not Releaſe the Buyer, without drawing Advantage on that Account?* The Pope declares them Uſurers, as ſinning againſt the Command. *Lend, hoping nothing therby.*

Anſw. Voluntary Forbearance, is equivalent to Lending; and therefore the Seller is no more oblig'd, to forbear, than to Lend; but in caſe he forbear, he doth as good as Lend, and in that

Caſe ſins againſt Chriſt's Precept. And this is the full of the Pope's Anſwer: He makes no mention of any other Title, as the Prejudice enſuing to a Tradeſman, and hinderance of Gain for want of his Mony, or the danger of no Pay, or the Loſing all; theſe are conſiderable, and it is but juſt, the Buyer ſhould make them good.

Leo the 10*th.* in the *Lateran* Council, having alledg'd Chriſt's Words. *Lend hoping nothing therby*: Concludes; *Ea enim eſt Propria Uſurarum Interpretatio, quando videlicet ex uſu Rei quæ non germinat, de nullo labore, nullo ſumptu, nullo periculo, Lucrum fetu conquiri ſtadetur.* For this is the proper Interpretation of Uſuries, *viz.* When one Studies to Gain, and receive Profit from things which are unfruitful, without Labour, without Expence, and without Danger.

Anſw. I ſhould think the Author had made it his Employment to cull out places, to the ſettling what he pretends to overthrow. The Pope in that Bull, ſilences the Zeal of ſuch, as impugned the Mounts of Piety, as Uſurious, having premis'd the Reaſons invented by them;

them; of thoſe Reaſons, one is contained in the Words, which *Du Tertre*, either by overſight, or diſingenuity, makes to be the Pope's. Whereas His Holineſs, having related the Arguments of ſuch, as diſapprov'd of the Mounts of Piety, as Uſurious, encourages the erecting of them, by granting Indulgencies; And who ſhall either by word or writing, Preach or Diſpute againſt them, he makes liable to the Puniſhment of Excommunication. *Latæ ſententiæ, nullo obſtante Privilegio.* That is, *Ipſo facto*, to be incurr'd no Priviledge whatſoever withſtanding it. What greater evidence of this Pope's Judgment of the invalidity of their Reaſons, and amongſt the reſt of this objected, which *Du Tertre* inconſiderately brings for the Pope's, tho' rejected by His Holineſs. But *Du Tertre* would appear ſome Body.

To anſwer Reaſon with Reaſon. That Mony cannot fructify, has often been denied, and is apparently untrue, in the Gain to be made in Purchaſing good Pennyworths; inſomuch after all, *Du Tertre* himſelf, *Pag.* 134, and 135. acknowledges that Saying to be verified

only of *Mony Lent*, which being no more the Lender's, but the Borrowers, can yield nothing to the Lender; By reason. *Res fructificat Domino.* The thing fruits to its Owner, and so far he is in the Right; but seems not to reflect, that it may fructify before 'tis Lent, and then to Bargain for what it may yield, is no *Lending*, nor *Usury*. Nor is it without Labour, Expences, and Danger, that Mony is Lett out. What Labour in Getting it? In Preserving it? To omit lesser Cares and Troubles, in drawing up Deeds, Counting? *&c.* The want of its Profit, Is it not a sort of Charges? The danger of Damage, the Exposer of his Mony, takes upon himself, which may happen from frequent Casualties, for want of his Mony, as in Accidents of Fire, Sickness, Imprisonments, War, or the like; Is it not very Sensible? And where is the Principal? And yet by confession of those very Divines, no *Usury* where such Causes intervene.

But *Greg.* the *9th*, even excludes even the *Danger of Losing the Principal*, from being a good Title. *Cap. Naviganti vel eunti ad Nundinas*, &c. The Person Lend-

ing

ing a certain Summ of Mony, to one that Puts to Sea, or go's to a Fair, receiving ſomewhat above the Capital for taking upon himſelf the Danger, is to be judg'd an Uſurer.

Anſw. How doth this cohere with the Objection of the Precedent pretended Authority? There 'tis required there be no danger; Here, even in caſe of Danger, 'tis made Uſury to take Intereſt. *Bernartius* cited by *Laym.* n. 13. *de Uſura.* ſuſpects a Miſtake of Print, by the Omiſſion of a *Non.* So that in the place of *is to be judg'd,* ought to be read, *is not to be judg'd.* This is clearly gather'd from the Connexion, as you may ſee there. If this like you not, e'en take the words as they lie. He that Lends ventures the Danger of Loſing; ſo that to Bargain for that Danger, by way of Inſurance, is either not to Lend, or taking for the Danger of what is Lent, is Uſury.

Innocent the 3d. *Declares Uſury to be againſt both Teſtaments.*

Anſw. We ſay 'tis alſo againſt the Law of Nature, and by its being ſo, we have evinced, that the Putting out Mony, as in Practice, is no *Uſury.*

To make an end of tiring my Reader with theſe and like Citations; *Cuſtom*, the beſt interpreter of Authority, and the *Definition* of *Uſury*, by which all *Uſury* muſt be tried, are fully ſufficient, to ſolve whatever Objection. I have not made it my Buſineſs to trace *Du Tertre*, ſtep by ſtep, he is ever upon the wing, and rather flutters, than walks to amuſe with the Noiſe of his *Prones*, where he cannot convince with Reaſon, himſelf Preſumptuous, inflicts that Character, upon three Divines of Known Ability, *Medina*, *Leſſius*, *Valentia*, *Pag.* 138. where he abuſes his Reader, by impoſing upon *Leſſius* very groſly, as will appear to the Examiner, from whence I gueſs, how he treats the others, which I have not by me. To what purpoſe, *Pag.* 145. doth he unite Oppoſits, as *Leſſius*, and *Valentia*, with the Author of the Letter he impugns? Is itany wiſe aſtoniſhing, that Oppoſits ſhould contradict one another? His inference, that the Danger of the Principal is greater, when in the hands of the Poor; therefore more may be taken from them, than of the Rich, is a pure Inference of his own Brain, without

without Premiſes. Who commits any conſiderable Summs to the Poor, and knows he not that Intereſt tax'd by Law, cannot be exceeded; and that this only increaſes, as the Sums putt out do, leſs for little Sums, and more for greater? The Law therefore is favourable to the Poor, where the Danger of the Principal is greater.

Who will not ſmile at the Man's Eloquent Simplicity, *Pag.* 144? Where after pretenſions to Univerſality, after having in one Leaf, no leſs than thrice rallied up Fathers, Popes and Councils, by way of Crowning all he tells you, That *many Learned Doctors of* Sorbon, *and of the Faculty of Divinity of* Paris, *among which, were the moſt Illuſtrious Curats of that great City have Signed the Common Sentiment of the Church in the Matter of Uſury.* I ſuppoſe in Condemning the common Practice.

Anſw. Was it their Signing that made it common? Or if common before, what need of their Signing? They Sign'd then what was not common to all, and what he would make common. But how? By the Signing of Many. He ſays, not by the Signing of all; he ſays not of the greateſt

greateſt Part, the oppoſit then, might be as common, as what they Sign'd. Many Doctors therefore, and they Doctors of the *Sorbon* too; Many Curats, and they Curats of *Paris* too, with whole Towns, and Provinces in *France*, practiſing what he abuſively ſtiles Uſury, are of poiſe enough, not only to counterballance, but to outweigh the Authority of his many Doctors and Curats, as to the common Senſe of the Church. And the Biſhops of *France*, Are they to be ſlighted, becauſe ſilent Lovers of Peace, and Enemies of Novelty? Can they be thought to be leſs concern'd for the good of Souls, or leſs knowing than ſome Curats of *Paris*? And their Silence, is it not a loud rebuke, to his Many? And the Divines of other Nations, Are they to paſs for Shadows? With all reſpect due to the *Sorbon*, be it ſaid, other Countries, have given, and daily afford to the World, Men as Eminent for Learning; Why not then to be relied on, as well as his Many? For which we have his bare Word. *England* alone has oftner given Maſters to the *Sorbon*, than the *Sorbon* to *England*.

Perchance

Perchance *Du Tertre* might have inſiſted, as ſome of late have done, upon the Propoſitions condemn'd by *Innocent* the 11*th*, *Anno*. 1679. I therefore ſet them down, leaving to the Reader, to judge how far they affect our Caſe.

The 24*th* Propoſition runs thus: *Uſura non eſt, dum aliquid ultra ſortem exigitur, tanquam ex Benevolentia, & gratitudine debitum, ſed tantum ſi exigatur, tanquam debitum ex Juſtitia.* 'Tis no Uſury if ſomething above the Principal be exacted, as due by way of Benevolency, and Gratitude, but only as exacted by way of Juſtice.

Anſw. The Propoſition is deſervedly condemn'd, and condemns it ſelf. For a Benevolence, or ſpontaneous Act of Gratitude, cannot be ſaid properly to be Due, and therefore to Exact it as Due, is Injuſtice; and if for the Uſe of a Principal Lent, 'tis Uſury. To receive a Benevolence, or Gift by way of Gratitude, is not condemned? Nay to Exact a Gift once made, is not even Injuſtice, it being his, to whom it is given; now by the general Agreement this Gift is made, antecedently to the Putting out Mony,

it

it may therefore be required; Beſides, the Propoſition reaches none of the foremen-tioned ways, or Titles, for which Intereſt is Due, by way of Juſtice.

The 41. Propoſition is: *Cum Mutuata Pecunia ſit Precioſior numeranda, & nullus ſit qui non Majoris faciat Pecuniam Preſentem quam futuram, poteſt Creditor aliquid ultra ſortem a Mutuatario exigere, & eo titulo excuſari.* Since Mony Lent, is better than Mony to be Pay'd, and that there is no Body, who doth not eſteem Preſent Mony, more than future, the Creditor upon that Account, may require ſomething above the Principal, from the Borrower, and ſo be excus'd from Uſury.

Anſw. Condemnations being *ſtricti Juris*, fall upon Propoſitions Preciſely as they lie; Now this Propoſition taken as it is worded, is both Scandalous and falſe. For one that Lends, parts with preſent Mony, upon future repay-ment, a token they are equal, at leaſt, in his eſteem. Is he no Body? Beſides, dif-ference of time, alters not the worth of Mony. Whence it enſues that to ground a Title of receiving Intereſt, upon ſo

clear

clear an untruth, and Futurity of repayment, eſſential to Lending, is to excuſe taking Intereſt for Lending, which is Scandalous, and therefore juſtly Condemned.

To the aforeſaid Propoſitions, may be added the 47*th*. Among thoſe Condemn'd by *Alex.* the 7*th*. *Licitum eſt mutuanti aliquid ultra ſortem exigere ſi ſe Obliget ad non repetendam. ſortem uſque ad certum Tempus.* 'Tis Lawful for a Lender, to Exact ſomething above the Principal, provided he Oblige himſelf, not to call it Back, for a Set time.

Anſw. Who ſees not, that ſuch a Lender would have Intereſt, for a pure Forbearance, which is Flat Uſury, as we have often Affirm'd, and follows from its Definition. So that the Propoſitions Condemn'd by the late *Popes*, leave our Caſe untouched. And no ways oppoſe what has been ſaid for the Lawfulneſs, of Putting out Mony, conſider'd as was Promiſed, as to the Law of Nature, Scripture, and Church.

I ſhould not have Concern'd my Self in an Anſwer to Monſieur *Du Tertre's* Book, long ſince Printed, and I Queſtion not

not, but already Answer'd, by some of his own Nation, had not his Genius pass'd the Seas, and appear'd with no other Weapons than his, to the Terror of Timorous Souls, and perplexing of Consciences.

CHAP. XVII.

The *CONCLUSION.*

TO Conclude as I Prefac'd. Having presented the Reader, according to Promise, with what your Reformers, in the Point of Putting out Mony, have to say to Us, and we in Answer to them, let Him call a Jury, of his Impartial Thoughts, to the Case of Putting out Mony, and upon Evidence, brought in against it, let him Condemn it, of Usury. But if no Evidence appears, Possession of its Innocency still holds, Grounded in Agreement, and Custom, upheld by Judges, Justified by Divines, upon several Titles, and generally Practis'd. If Scripture, Church, and Fathers in veighing

veighing againſt Uſury, reflect not upon it, if the Law of Nature diſallows it not, let it be clear'd at the Barr, of unbyaſs'd Reaſon. Let the Practiſers make Conſcience, of Real Sins; let them of their Juſt Gains, be Charitable to the Needy; let them hope no Increaſe for *Lending*, but from God, yet at the ſame time; they are Rightly inform'd, they have no Obligation of Prejudicing themſelves, but a Duty to Improve Honeſtly the Talents God has left with them, by Puting them out at an eaſy Rate. It is a ſervice they owe to the Publick, for which we are Born. Such as Scrupuliſe at it; let them much more make Conſcience of judging others. Let them be Careful, leſt upon Surmiſes of Uſury, or rather under a falſe Pretext, they become Slaves of Avarice, make their Coffers *Temples*, and Mony their *Idols*; by ſo doing, they Clip the Common Stock; ſo that the Share they have, goes no more, they caſt Trade into a Deep Conſumption, by depriving it, of its Nouriſhment, and wholly Croſs the deſign of the General welfare of a Nation, Mantain'd by a Circulation of Mony, as our Bodies are, by a Circulation of Blood.

No

No leſs Zeal was ſhown, by ſome Preachers, and Divines, againſt the *Mounts* of Piety, than ſince has been, by a few others, againſt Putting out of Mony; When the *Pope* Heading a Council, in regard of the Poor; and Common Neceſſities, judg'd fit not only to Curb it, but when Tranſported either to Words, or Writing, to Excomunicate it as a Diſquiet to the Chriſtian World. The Rule of Law, *Quod qui commodum ſentit, onus quoque ſentire debet*, on which the *Pope* and Council appear to ground themſelves, is of no leſs Force in our Caſe: The Rule is: *That he who Partakes of a Conveniency, ought alſo to ſhare of the Burden annex'd to it.* It is for Conveniency Mony is taken up, the Burden annex'd to it, is Intereſt, which for Juſt Conſiderations, the Law judges Reaſonable. It were a Piece of Signal Temerity, to Queſtion the ſaid *Mounts* of Piety, and if the Common Practiſe have the ſame Reaſon, even with ſome advantage, were it not too Ventureſome, to Condemn it? Would not the Cenſure by Parity of Reaſon, equally affect both? And were not this to forfeit, the Reſpect, and Submiſſion

miſſion due to Popes, the *Lateran* Council, and Chriſtendom in General? The ends of the Mounts of Piety, is to relieve ſuch as Neceſſity compels to take up Mony at exorbitant Rates; This alſo is Provided for, by the common Practice, tho not ſo fully, it being not eaſy to find Mony to take up; whereas the ſaid Mounts are ever ready to Supply; on which Account they are to be wiſhed for in this Realm. The Mounts of Piety, towards the Maintenance of Neceſſaries, receive ſomewhat more, than Current Intereſt; with Current Intereſt alone, the common Practice contents it ſelf, the Mounts are ſecured of their Principal; the common Practice for moſt part leaves it Hazardous. Is it the taking leſs? Is it the Hazard that creats Uſury? If not, How can that Guilt be charged upon the common Practice, and not the Mounts of Piety? And to reflect upon them as Uſurious, Doth it not betoken undutifulneſs, and more want of Charity, than proviſion of true Zeal, more Temerity, than Prudence.

The ſimplicity of the Dove, is to be guided by the Prudence of the Serpent to

Believe not every Spirit, (says St. *John*, 1 *Epist. Chap.* 4.) Too much Austerity of Doctrine, savours more of Affectation, than Discretion, and drives oftner at Libertinism, than true Reform, every one inclining to shake off the Yoke, when rendred too heavy. Excess of Rigor is a kind of Usury, in that it extorts upon Conscience to the Oppression of a weak Brother. The way to Heaven is narrow, we ought not to streighten it more; nor to lay stumbling blocks in the way.

This was the Sense of the most Learned and Illustrious Order of St. *Dominick*, in the Glos upon the Prologue, to their Constitutions, *Tex.* 1. §. 3. to those Words, *Cum Ordo Noster*, &c. *Declaramus*, &c. Say they, *We declare, That three things Chiefly hinder the saving of Souls: of these, the Third is too much Rigor, and Austerity in Counsels, and Opinions, for Men are so terrified with them, as to neglect the Salvation of their Souls; wherefore Rigor and Severity, are to be Relented, as much as may be, and Men are to be Treated with Benignity.*

Yet nearer to our Purpose, the great Son of so Wise, and Religious a Parent,

St. *Tho*

St. *Tho. quæst.* 9. *Art.* 15. in Corp Discourses it thus: *Omnis Quæstio, in qua de Peccato Morali quæritur*, &c. 'Tis dangerous to decide a Question, treating of a Mortal Sin; if no expreſs Truth appears; by reaſon the Error, by which it is apprehended to be mortal, what is not mortal, binds under Mortal. The expreſs Truth againſt the Common Practice, has not yet been diſcovered.

Du Tertre therefore, and thoſe of his Humor, ſhould have taken and Con'd the Leſſon, being of ſo high Importance, given them by the Renowned Chancellor, *John Gerſon, lib.* 4. *de Vita ſpirituali. Littera. O.* pag. 3. *Doctores Theologi*, &c. Doctors of Divinity, muſt not eaſily conclude certain Actions, or Omiſſions, to be mortal Sins; for by ſuch Wilful, Rigid, Hard, and too ſtrict Aſſertions, Men are never drawn out of the Mire of Sin, but are plung'd into another, deeper, becauſe more Deſperate. To what Purpoſe then to render more bitter, and heavy the Yoke of Chriſt, which is ſweet, and the Burden which is light?

This had been much to *Du Tertre*'s Purpoſe, and perchance might have al'

lay'd his too fervorous Rigor; when, *Pag.* 172. he pretends with a Scrap or two of a holy Father, to block up the way to Heaven, and to exclude all Merchants, and Tradesmen from Eternal Bliss. And is not this to endeavour to render Salvation and God's Precepts Morally impossible? Or at least as impossible, as it is for Human Society to be maintained without Merchandizing and Commerce? Doth it not reflect upon Providence, as Establishing a Religion incoherent with all Trading, so necessary to the Welfare and Preservation of Mankind? It is a Peculiar Genius rules his Pen; Whether for love of Novelty, or to appear somebody in the World, or out of mistaken Zeal, to correct what needs no Amendment, it is not for me to decide. As to my self, whatever I have writ in Defence of the Common Practice, I shall entirely submit to better Reason, it is my Duty so to do; and having done what I thought my Duty, to the quieting of Conscience, in the Case of putting out Mony, I end.

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FINIS.